(20)

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 120

LOUISIANA AND WESTERN RAILROAD COMPANY,
PLAINTIFF IN ERROR,

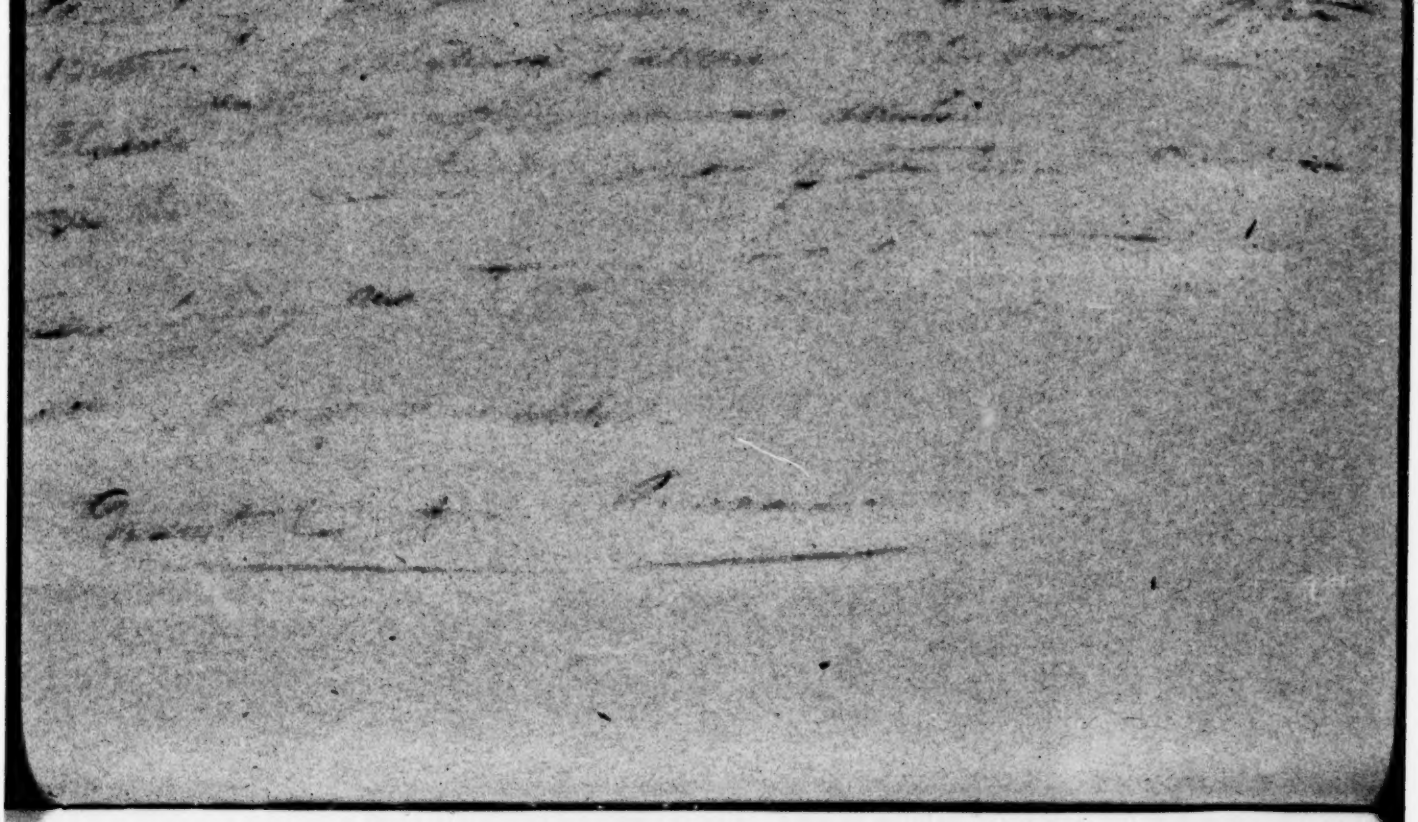
vs.

JOHN B. GARDINER

IN ERROR TO THE COURT OF APPEAL OF THE STATE OF LOUISIANA, FIRST CIRCUIT

FILED MAY 22, 1926.

(31,315)



(31,215)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 494

LOUISIANA AND WESTERN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE COURT OF APPEAL OF THE STATE OF LOUISIANA, FIRST CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 29, 1925

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 29, 1925

[fol. 1] **IN COURT OF APPEAL FOR THE FIRST CIRCUIT, STATE OF LOUISIANA**

JOHN B. GARDINER

vs.

LOUISIANA WESTERN RAILROAD COMPANY

PETITION FOR WRIT OF ERROR—Filed April 21, 1925

To the Honorable the Court of Appeal for the First Circuit, State of Louisiana:

The petition of the Louisiana Western Railroad Company, defendant and appellant in the above entitled and numbered cause, respectfully shows:

I

That on December 30th, 1924, this Honorable Court rendered a decree and entered a judgment in this cause in favor of John B. Gardiner and against Louisiana Western Railroad Company, your petitioner, overruling the plea of prescription of two years filed by your petitioner under Act No. 223 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1914, providing that:

"All actions for loss of or damage to shipments of freight shall be prescribed by two years, said prescription to run from the date of shipment,"

the said suit having been brought on April 13th, 1922, against your petitioner (a common carrier by steam railroad for hire engaged in interstate and intrastate commerce) for loss of or damage to a shipment of household goods made by the said Gardiner from Crowley, La., to himself at Murray, Ky., on April 3rd, 1920, petitioner being the initial carrier, so that more than two years had elapsed between the making of the said shipment and the institution of the suit.

That in overruling the plea based on the said state statute, this Honorable Court gave effect to paragraph 3 of Section 3 of the conditions of the bill of lading issued by your petitioner covering the said shipment, providing that:

[fol. 2] "Suits for loss, damage or delay shall be instituted only within two years and one day after delivery of the property,"

the property having been delivered at destination on April 15th, 1920. But that in so giving effect to the said bill of lading provision, this Honorable Court disregarded paragraph 11 of section 20 of the Interstate Commerce Act (Act of February 4, 1887, 24 Stat.

at L. 379, as amended by Transportation Act 1920, Act of February 28, 1920, 41 Stat. at L. 456, 494), providing that:

"It shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise, a shorter period * * * for the institution of suits than two years, such period for institution of suits to be computed from the day when the notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice,"

which statute had the effect of annulling and invalidating the said bill of lading provision, since it fixed a shorter time (two years and one day from the date of delivery) for the institution of suit than that permitted by the said statute (two years from date of written declination of claim); and that, therefore, the bill of lading provision being invalid, the state statute pleaded was applicable and should have been sustained.

That your petitioner in due course applied to this Honorable Court for a rehearing, which application was denied on February 18th, 1925; and that your petitioner thereupon and in due course applied to the Supreme Court of the State of Louisiana (the Court of last resort in the said state) for Writs of Certiorari and review, which application was by the said Supreme Court denied on March 30th, 1925, and that the said judgment on that day became final.

II

That in the judgment and decree of this Honorable Court and in the proceedings prior thereto, certain errors were committed to the prejudice of your petitioner, Louisiana Western Railroad Company, all of which will appear in detail from the assignment of errors filed with this petition.

[fol. 3]

III

That in this case petitioner has claimed rights, privileges and immunities under the statutes of the United States, and that the decree and judgment of this Honorable Court is adverse to the same.

IV

That there was drawn in question in this case the validity of a Federal Statute, paragraph 11 of Section 20 of the Interstate Commerce Act, in spite of which said Federal Statute, and in direct violation thereof, this Honorable Court gave effect to the shorter provision in the bill of lading sued on hereinabove quoted and thereby invalidated the said Federal Statute, which made null and void the said provision in the bill of lading.

V

That the decree and judgment of this Honorable Court was in favor of the validity of said bill of lading provision and against the

title, right, privilege and immunity set up and claimed by petitioner under the said Federal Statute, wherein a manifest error has happened to the great damage of your petitioner, and that the said decree and judgment of this Honorable Court was adverse to the same.

VI

That petitioner desires a writ of error from the said decree and judgment of this Honorable Court to the Honorable, The Supreme Court of the United States.

Wherefore, petitioner prays that a writ of error, to operate as a supersedeas, may issue in this behalf to the Honorable the Supreme Court of the United States for correction of the errors so contained; that a transcript of the record of the proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States, and for all general and equitable relief.

Respectfully submitted, Philip S. Pugh, Denegre, Leroy & Chaffe, Attorneys for Relator. Harry McCall.

[fol. 4] Sworn to by Philip S. Pugh. Jurat omitted in printing.

IN COURT OF APPEAL OF LOUISIANA

ORDER ALLOWING WRIT OF ERROR—April 4, 1925

Let a Writ of Error be granted unto Louisiana Western Railroad Company, the petitioner herein, to the Honorable the Supreme Court of the United States upon its furnishing bond with good and solvent security and conditioned according to law in the sum of One Thousand ($1,000.00) Dollars.

And let said Writ of Error operate as a supersedeas and a stay of execution herein.

Julian Mouton, Presiding Judge of Court of Appeals, First District, First Circuit of La.

IN COURT OF APPEAL OF LOUISIANA

JUDGE'S CERTIFICATE

I certify that the Court of Appeal for the First Circuit, State of Louisiana, consists of three Judges, there being no Chief Justice, and that the jurisdiction of the said Court embraces three districts, there being a different presiding judge as to each district, and that as to the district from which this case comes, I am the Presiding Judge.

I further certify that this Court has no seal.

Julian Mouton, Presiding Judge of Court of Appeal, First District, First Circuit, State of Louisiana.

[File endorsement omitted.]

[fol. 5] IN COURT OF APPEAL OF LOUISIANA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 21, 1925

The Louisiana Western Railroad Company, defendant and appellant in connection with its petition for a writ of error makes the following assignment of errors, which it avers are to be found in the opinion, judgment and decree of this Honorable Court in this matter:—

I

That the Court erred in overruling the plea of prescription filed by your petitioner based on Act No. 223 of the General Assembly of the State of Louisiana passed at the Regular Session of 1914, providing that:

"All actions for loss of or damage to shipments of freight shall be prescribed by two years, said prescription to run from the date of shipment,"

since the shipment for loss of or damage to which this suit was brought was made from Crowley, La., to Murray, Ky., on April 3rd, 1920, and the suit was not brought until April 13th, 1922.

II

That the Court erred in not holding illegal, null and void the provision in the bill of lading covering the shipment on which the suit was based that

"Suits for loss, damage or delay shall be instituted within two years and one day after delivery of the property"

because in violation of paragraph 11 of Section 20 of the Interstate Commerce Act (Act of February 4, 1887, 24 Stat. at L. 379, as amended by Transportation Act 1920, Act of February 28, 1920; 41 Stat. at L. 456, 494) providing that:

"It shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period * * * for the institution of suits than two years, such period for institution of suits to be computed fro mthe day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice."

[fol. 6] since the two years and a day from delivery fixed by the bill of lading provision (within which term since the shipment was delivered at destination on April 15th, 1920, the suit, brought on April 13th, 1920, was filed, though not brought within the term of the State Statute, since the shipment was made on April 3rd, 1920), was a shorter period than the two years from date of written declina-

tion of claim permitted as a minimum by the said statute; and that in giving effect to the bill of lading provision, the Court thereby invalidated the said Section of the Interstate Commerce Act, a Federal Statute, by reason of which petitioner claimed the application of the state statute above quoted.

Philip S. Pugh, Harry McCall, Denegre, Leroy & Chaffe, Attorneys for La. Western Railroad Co., Plaintiff in Error.

[File endorsement omitted.]

[fol. 7] IN COURT OF APPEAL OF LOUISIANA

WRIT OF ERROR—Filed April 21, 1925

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Judges of the Court of Appeal, First District, First Circuit, of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeal, First District, First Circuit, of the State of Louisiana, before you, or some of you, between John B. Gardiner, plaintiff, and the Louisiana Western Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Louisiana Western Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, this the 21st day of April, in the year of our Lord one thousand nine hundred and twenty-five.

W. C. Young, Clerk of the Court of Appeal, First District, First Circuit, of Louisiana.

Allowed by Julian Mouton, Presiding Judge, Court of Appeal, First District, First Circuit, of Louisiana.

I hereby certify that a true copy of the within Writ has this day been lodged in the Clerk's office for the use of the Defendant in Error.

I further certify that this Court has no official seal, and that, therefore, I cannot affix an official seal hereto.

Dated 21st day of April, 1925.

W. S. Young, Clerk Court of Appeal, First District, First Circuit, State of Louisiana.

[File endorsement omitted.]

[fol. 8] IN COURT OF APPEAL OF LOUISIANA

WRIT OF ERROR

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Court of Appeal for the First Circuit, State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeal for the First Circuit, State of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John B. Gardiner and the Louisiana Western Railroad Company, a corporation, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the Louisiana Western Railroad Company, as by its complaint appears, clause of the Constitution, or of a treaty, or statute of, or commission [fol. 9] held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Louisiana Western Railroad Company, as by its Complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, the 29th day of April, in the year of our Lord one thousand nine hundred and twenty-five.

H. J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana. (Seal District Court for the Eastern District of La.)

Allowed by Julian Mouton, Presiding Judge, Court of Appeal, 1st Circuit, 1st District, State of Louisiana.

[fol. 10] State of Louisiana,
Parish of East Baton Rouge:

Clerk of Court's Office

I, Walker C. Young, Clerk of Court of East Baton Rouge Parish, State of Louisiana, and Ex-officio Clerk of Court of Appeal, First Circuit, State of Louisiana, do hereby certify that there was lodged with me as such clerk on April 21, 1925, in the matter of John B. Gardiner vs. Louisiana Western Railroad Company, (1) original bond, of which a copy is herein set forth; (2) two copies of the Writ of Error issued by the Presiding Judge of this Court, as herein set forth, one for the defendant in error and one to file in my office.

I further certify that on May 9th, 1925, two copies of the Writ of Error, subsequently issued by the Clerk of the United States District Court for the Eastern District of Louisiana, as herein set forth, one for the defendant in error and one to file in my office, were lodged with me as Clerk of the above court.

In testimony whereof, I hereunto set my hand (there being no official seal of this court) at my office in Baton Rouge, La., this 11th day of May, A. D. 1925.

W. C. Young, Clerk, by Fred S. Le Blanc, Deputy Clerk.

[fol. 11] Citation—In usual form, showing service on Medlenka & Bruner; filed April 21, 1925; omitted in printing

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[fol. 12] In Court of Appeal of Louisiana

[Title omitted]

Præcipe for Transcript of Record—Filed Apr. 21, 1925

Whereas, the Louisiana Western Railroad Company has applied for and obtained a writ of error to the Supreme Court of the United States in the above numbered and entitled cause, it is hereby agreed by and between Philip S. Pugh, of counsel for plaintiff in error,

and Medlenka & Bruner, of counsel for defendant in error, that the following documents shall constitute the transcript to be made up and prepared, same to constitute the complete transcript for the hearing of said cause, to-wit:

1. Original petition of plaintiff, together with the two bills of lading attached thereto;
2. Plea of prescription filed by defendant, Louisiana Western Railroad Company;
3. Judgment of the Eighteenth Judicial District Court, in and for the Parish of Acadia, maintaining said plea of prescription;
4. Judgment of the Court of Appeal, First District, First Circuit of Louisiana, reversing the judgment of the lower court on the plea of prescription and over-ruling same;
5. Original answer of defendant, Louisiana Western Railroad Company;
6. Petition of plaintiff, J. B. Gardiner, before the Circuit Court of Calloway County, Kentucky and minute entry of said court attached thereto;
7. First supplemental answer of defendant, Louisiana Western Railroad Company;
8. Second supplemental answer of defendant, Louisiana Western Railroad Company, renewing its plea of prescription;
9. Judgment of the Eighteenth Judicial District Court in favor of plaintiff, J. B. Gardiner, and against the defendant, Louisiana Western Railroad Company;
10. Judgment of the Court of Appeal, First District, First Circuit, of Louisiana, affirming said judgment of the District Court, but [fol. 13] likewise amending same;
11. Application for rehearing to the Court of Appeal, First District, First Circuit of Louisiana, filed by the Louisiana Western Railroad Company;
12. Judgment of the Court of Appeal, First District, First Circuit of Louisiana, denying the rehearing in the case of J. B. Gardiner v. Louisiana Western Railroad Company, no reasons being assigned;
13. Application by the defendant, Louisiana Western Railroad Company, to the Supreme Court of Louisiana for writ of certiorari or review, and assignment of errors in connection therewith;
14. Judgment of the Supreme Court of Louisiana, denying a writ of certiorari or review of the judgment rendered by the Court of Appeal, First District, First Circuit of Louisiana, in the suit of J. B. Gardiner v. Louisiana Western Railroad Company;
15. Copy of bond for writ of error; and
16. This agreement.

Counsel for defendant in error, J. B. Gardiner, admit that they have this day accepted service of the citation in the application for writ of error; and further acknowledge that they have received copies of the petition for writ of error, of the assignment of errors, and also of the writ of error.

Done and signed at Crowley, Louisiana, this 20th day of April, 1925.

Philip S. Pugh, Attorney of Louisiana Western Railroad Company, Plaintiff in Error. Medlenka & Bruner, Attorneys of J. B. Gardiner, Defendant in Error.

[File endorsement omitted.]

[fol. 14] IN COURT OF APPEAL OF LOUISIANA

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed May 9, 1925

It is hereby stipulated by and between John B. Gardiner, plaintiff, and defendant in error, and the Louisiana Western Railroad Company, defendant and plaintiff in error, in the above numbered and entitled cause, that the transcript of record filed in the office of the Clerk of the Supreme Court of the United States with the petition for writ of error herein, be taken as, and stand in lieu, of a return to said writ.

It is further stipulated and agreed that the writ of error herein issued by the Clerk of the United States District Court for the Eastern District of Louisiana, shall be regarded and treated as if it had been issued originally instead of a writ having been originally issued by the Judge of the State Court, and no question or issue shall be raised on this score.

Thus done and signed by the respective attorneys of the plaintiff and defendant in the above-numbered and entitled cause.

J. P. Medlenka, Howard E. Bruner, Attorneys for John B. Gardiner, Plaintiff. Philip S. Pugh, Attorney for Louisiana Western Railroad Company, Defendant.

[File endorsement omitted.]

[fol. 15] BOND ON WRIT OF ERROR FOR $1,000.00—Approved and Filed April 21, 1925; omitted in printing

[fol. 15a] IN COURT OF APPEAL OF LOUISIANA

RETURN TO WRIT OF ERROR

"In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

"In witness whereof I hereunto subscribe my name (there being no official seal of this court) in the City of Baton Rouge, this 12th day of May, A. D. 1925."

W. C. Young, Clerk, by Fred S. Le Blanc, Deputy Clerk.

[fol. 16] IN DISTRICT COURT OF ACADIA PARISH

PETITION—Filed April 12, 1922

To the Honorable the Eighteenth Judicial District Court of Louisiana in and for the Parish of Acadia:

Par. 1

The petition of John B. Gard-ner, of Murray, Calloway County, Kentucky, with respect represents:

Par. 2

That the Louisiana Western Railroad Company, a corporation operating a line of railroad through the parish of Acadia, with its legal domicile in the Parish of Orleans, Louisiana, is justly and legally indebted unto your petitioner in the full sum of three hundred — four ($324.00) dollars, with five per cent interest thereon per-annum from July 9, 1920, for this cause, to-wit:

Par. 3

That on April 3, 1920, petitioner delivered to the said railroad company at its station in the City of Crowley, Acadia Parish Louisiana for delivery to petitioner at Murray Kentucky a lot of household goods and two Ford Automobiles complete, all loaded in Car C. R. I. & P. 60353, in good condition, as evidenced by bills of lading iss-ed by said defendant railroad and hereto annexed for reference.

Par. 4

That the said car reached Murray Kentucky on or about July 9, 1920, with the following described household goods and parts of the automobiles damaged to value shown, to-wit:

1 Shuman Piano	damaged to the extent of	$65.00
1 Lib-ary case	" " " " "	15.00
2 Rocking chairs	" " " " "	7.00
1 Small Rocking Chair	" " " " "	2.00
1 Child's chair	" " " " "	2.50
1 Oil Stove	" " " " "	5.00
1 Baby High Chair	" " " " "	1.50
1 Dresser	" " " " "	2.00
1 Sideboard	" " " " "	3.00
1 Windshield (automobile)	" " " " "	17.50
1 Fender "	" " " " "	6.00
1 Back Curtain "	" " " " "	4.00
The total damage aggregating the sum of		$130.50

Par. 5

And the following articles were short, to-wit:

1 Pair of Ford Coils	valued at ..	$10.00
3 New casings (Ford)	" " ..	48.00
8 Bed Quilts	" " ..	40.00
1 Pair or set of bed springs	" " ..	3.50
3 Suits of men's clothes	" " ..	60.00
1 Man's hat	" " ..	3.00
[fol. 17] Seats and lights off the automobile	" " ..	25.00
1 Set carpenter tools	" " ..	4.00
The total loss aggregating the sum of		$193.50

Par. 6

That within six months after the arrival of the said goods and automobiles, petitioner made demand upon the delivering carrier, the Nashville, Chattanooga & St. Louis Railway Company for payment, which was refused and on October 29, 1920, petitioner filed suit in the Circuit Court of Calloway County Ky. to recover on same, but failed for the reason that petitioner was unable to prove that the damage and loss occurred while the said articles were in the possession or being transported by and over the said line of railroad.

Par. 8

That as the originating carrier, the defendant herein, the said Louisiana Western Railroad Company guaranteed the safe delivery of the said goods at destination and is responsible to your petitioner for failure to make safe delivery.

Wherefore petitioner prays that the said Louisiana Western Railroad Co. may be duly cited and served with a copy of this petition; that after the lapse of legal delays and due proceedings had, petitioner

do have judgment and recover of the said defendant, the full sum of Three Hundred, Twenty Four ($324.00) Dollars, with five per cent interest thereon per annum from July 9, 1920, until paid.

Finally petitioner prays for costs and for general relief.

By His Attorneys, (Sgd.) Medlenka & Bruner.

Sworn to by J. G. Medlenka. Jurat omitted in printing.

A true copy. This Apr. 22, 1925. Fred S. Le Blanc, Deputy Clerk.

[File endorsement omitted.]

[fol. 18] EXHIBIT TO PETITION

Bill of Lading

7-19-50,000 sets.

Bill of Lading—Standard Form of Straight Bill of Lading Approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908

United States Railroad Administration, Director General of Railroads, Louisiana Western Railroads

Shipper's No. —. Agent's No. —

Straight Bill of Lading—Original—Not Negotiable

Received, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading, at Crowley, La., 4/3, 1920, from J. B. Gardner the property described below, in apparent good order, except as noted (contents and conditions of contents of packages unknown), marked, consigned and destined as indicated below, which said Railroad agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from —— to —— is in Cents per 100 Lbs.

If Commodity

If — Times, 1st; if 1st Class, —; if 2d Class, —; if 3d Class, —; if 4th Class, —; if 5th Class, —; if A Class, —; if B Class, —; if C Class, —; if D Class, —; if E Class, —.

(Mail Address—Not for purposes of delivery.)
Consigned to J. B. Gardner.
Destination: Murray, State of Ky., County of ——.
Route: ——. Car Initial: ——. Car No.: CRIP 60353.

[fol. 19]

No. packages	Description of articles and special marks	Weight (subject to correction)	Class or rate	Check column
2	Ford Autos	10,000	.....	.....

N. O. & St. L. R. R.
Claim L 1784

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Freight Claim Office, Nashville, Tenn.

Received $— to apply in prepayment of the charges on the property described hereon.
—— ——, Agent or Cashier, per —— ——. (The signature here acknowledges only the amount prepaid.)

Filed 4/12/22. (Signed) F. M. Fontenot, Dy. Clk.
1—E.
P. 2.
Charges Advanced: $—.
J. B. Gardner, Shipper, per L. H. Hollier. (Sgd.) E. D. Peckham, Agent, per J.

(This Bill of Lading to be signed by the shipper and agent of the carrier issuing same.)

[fol. 20]

Conditions

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of

the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability [fol. 21] is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable despatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid.

Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export), or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling [fol. 22] or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or landings, shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are in- [fol. 23] dorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill

of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collusion, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof, hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

A true Copy.
This Apr. 22, 1925.

Fred. S. Le Blanc, Deputy Clerk.

[fol. 24] Bill of Lading

(For Use in Connection with the Standard Bill of Lading Approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908)

United States Railroad Administration, Director General of Railroads, Louisiana Western Railroad

This memorandum is an acknowledgment that a bill of landing has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

Shipper's No. —. Agent's No. —

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the

Original Bill of Lading, at Crowley 4/3 1920 from J. B. Gardner the property described below, in apparent good order except as noted (contents and condition of packages unknown), marked, consigned and destined as indicated below, which said Railroad agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interest in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from —— to —— is in Cents per 100 lbs.

If Commodity

If — Times, 1st; If 1st Class, —; If 2d Class, —; If 3rd Class, —; If 4th Class, —; If 5th Class, —; If A Class, —; If B Class, —; If C Class, —; If D. Class, —; If E Class, —.

(Mail Address—Not for purposes of Delivery.)

[fol. 25] Consigned to J. B. Gardner.
Destination: Murray, State of Ky., County of ——.
Route: ——. Car Initial: —— Car No. C R I P 60353.

No. packages	Description of articles and special marks	Weight (subject to correction)	Class or rate	Check column
One Car	H. H. Goods Rel. Val. 10 cwt. S L C. Charges fully Guaranteed	2,000	....	....

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Freight Claim Office, Nashville, Tenn.

N. C. & St. L. R. R. Claim L 1784.
Received $ — to apply in prepayment of the charges on the property described hereon.
—— ——, Agent or Cashier, per —— ——. (The signature here acknowledges only the amount prepaid.)
Charges Advanced: $ —.

Filed 4/12/22. F. M. Fontenot, Dy. Ck.
P 1.

J. B. Gardner, Shipper, per S. H. Hollier. E. D. Peckham, Agent, per J.
1-d.

[fol. 26] Conditions

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such lia- [fol. 27] bility is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable despatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable

shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid.

Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export), or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.

Any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling [fol. 28] or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves or landings, shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special [fol. 29] agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances; or from collusion, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

A true copy.
This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 30] EXHIBIT TO PETITION

Freight Bill—Form 801

Murray, Kentucky, Station, April 15, 1920

Freight Bill No. B227

Consignee: J. B. Gardner; Destination: Murray, Kentucky; Route: ——.

To Nashville, Chattanooga & St. Louis Ry., Dr., for Charges on Articles Transported

Way-billed	From	Way-bill date and No.	Car initials and No.	Full name of shipper
LW-RR.	Crowley, La.,	7, 4/3/20.	CRI&P 60353	J. B. G.

Point and Date of Shipment: ——; Original Car Initials and No.: —; Connecting Line Reference: ——; Previous Way-Bill References: ——.

Number of packages	Articles and marks	Weight	Rate	Freight advances	Total
Car	H. H. Goods. Val. 10.00 per cwt.	Min., 20,000	49	98.00	
Tax				2.82	
	Total				$100.94

Copy.
*Total prepaid, $—.
Received payment 4/15/20. 191–.

O. L. Boren, Agent.

[fol. 31] Rules

1. This form must be prepared with typewriter, pen or indelible pencil; all information called for to be shown in full and in a clear and legible manner.
2. Weight, rate and charges must be shown in detail for less than carload shipments.
3. Demurrage, switching, icing or other miscellaneous charges not included in the rate for transportation must be stated in detail, and the points at which such charges accrued, shown.
4. When charges are assessed on track scale weights, gross, tare and net weights on which charges are based and name of weighing station, must be shown.

* For use at Junction Points on Freight Subject to Connecting Line Settlement.

5. The route over which the shipment moved from point of origin to destination, including the initials of each carrier and name of each connecting line junction point, must be shown.
6. Over-charges will be refunded only on presentation of original paid freight bills.
7. Original paid freight bills should accompany claims for overcharge, loss or damage.
8. All freight will be subject to demurrage or storage charges or both, as provided in published tariffs.

A true copy.
This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 32] EXHIBIT TO PETITION

Freight Bill—Form 801

Murray, Ky., Station, April 15, 1920

Feright Bill No. B-228

Consignee: J. B. Gardner; Destination: Murray, Kentucky; Route: ——.

To Nashville, Chattanooga & St. Louis Ry., Dr., for Charges on Articles Transported

Way-billed	From	Way-bill, date, and No.	Car initials and No.	Full name of shipper
LW-RR.	Crowley, La.	8, 4/3/20	CR1&P 60353	J. B. G.

Point and Date of Shipment: ——; Original Car Initials and No.; ——; Connecting Line Reference: ——; Provious Way-bill References: ——.

Number of packages	Articles and marks	Weight	Rate	Freight advances	Total
2	Autos	10,000	94	94.00	
Tax				2.82	
Total					$96.82

Copy.
*Total prepaid, $—.
Received Payment 4/15/20. 191-.

O. L. Boren, Agent.

*For use at Junction Points on Freight Subject to Connecting Line Eettlement.

[fol 33] Rules

1. This form must be prepared with typewriter, pen or indelible pencil; all information called for to be shown in full and in a clear and legible manner.
2. Weight, rate and charges must be shown in detail for less than carload shipments.
3. Demurrage, switching, icing or other miscellaneous charges not included in the rate for transportation must be stated in detail, and the points at which such charges accrued, shown.
4. When charges are assessed on track scale weights, gross, tare and net weights on which charges are based and name of weighing station, must be shown.
5. The route over which the shipment moved from point of origin to destination, including the initials of each carrier and name of each connecting line junction point, must be shown.
6. Over-charges will be refunded only on presentation of original paid freight bills.
7. Original paid freight bills should accompany claims for overcharge, loss or damage.
8. All freight will be subject to demurrage or storage charges or both, as provided in published tariffs.

A true copy.

This Apr. 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 34] Exhibit to Petition

N1 Freight Bill

April Form 800

D Murray Ky Station 7/9 1920 Freight B 228

Bill No.

Consignee J. B. Gardner
Destination Route (D-2)

To Nashville, Chattanooga & St. Louis RR. Dr., For Charges on Articles Transported:

Way-billed	From	Way-bill, date, and No.	Car initials and No.	Full name of shipper
I.WRR.	Crowley, La.	8, 4/3/20	CRI&P 60353	J. B. G.

Point and Date of Shipment Original Car Initials and No. Connecting Line Reference Previous Way-Bill References

Number of packages	Articles and marks	Weight	Rate	Freight advances	Total
2	Autos	10,000	94	....	94.00
		Tax.....			2.82
			115		96.82
Should Read:		10,000	79	115.00	
				79.00	
					194.00
		Tax.....			5.82
					199.82
		Total U/C...			100.00
		Tax.....			3.00
					103.00

(Copy.)
D 2.
Total prepaid, $—
Received Payment —— —, 19—.

—— ——, Agent.

*For use at Junction Points on Freight Subject to Connecting Line Settlement.
(47.)

Filed 3/13/24. (Signed) Gus E. Fontenot, Clerk.

[fol. 35]

Rules

1. This form must be prepared with typewriter, pen or indelible pencil; all information called for to be shown in full and in a clear and legible manner.
2. Weight, rate and charges must be shown in detail for less than carload shipments.
3. Demurrage, switching, icing or other miscellaneous charges not included in the rate for transportation must be stated in detail, and the points at which such charges accrued, shown.
4. When charges are assessed on track scale weights, gross, tare and net weights on which charges are based and name of weighing station, must be shown.
5. The route over which the shipment moved from point of origin to destination, including the initials of each carrier and name of each connecting line junction point, must be shown.
6. Over-charges will be refunded only on presentation of original paid freight bills.
7. Original paid freight bills should accompany claims for overcharge, loss or damage.

8. All freight will be subject to demurrage or storage charges or both, as provided in published tariffs.

A true copy;
This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 36] In Circuit Court of Calloway County

J. B. Gardner, Plaintiff,

vs.

Walker D. Hines, Director General of the Rail Roads of the United States, and Nashville, Chattanooga and St. Louis Railway Company, Defendants

Petition—Filed Sept. 2, 1923

The plaintiff states that the defendant Nashville, Chattanooga and St. Louis Railway Company is a private corporation organized and incorporated by and under the laws of the state of Tennessee and as such has power to contract and be contracted with sue and be sued as an individual as such it is engaged in the business of a common carrier of passengers and property for hire, and that sometime about April the first of this year it undertook to haul or transfer for hire the following species of property from Crowley, La. to Murray, Ky. said undertaking and agreement was made by it as such common carrier of freight and that same was shipped or consigned at said place above mentioned to Murray Ky and the following is a list of said property so consigned and *and* agreed to be delivered in Murray, Ky. in good condition, 1 Schuman Piano 1 Library case, two rocking chairs, one small rocking chair, one child's bed, one oil stove, one Baby high chair, one side board, one dresser, one wind shield for 1915 model Ford Car, one fender for Ford Car, one back curtain for one Ford Touring car, one set of Ford coils, three new casings 30x3½, eight quilts seven of which were had made, one pair of bed springs, three suits of men's clothes. one hat and set of carpenter's tools, each, and all of said enumerated articles of personal property were delivered to the defendant or its agent at Crowley, La. in good condition to be shipped by it and this defendant its agent who by the terms of the contract adopted the original as the contract of this defendant and agreed as is above alleged to safely deliver same in Murray, Ky. the freight charges for said shipment from said place of consignment to Murray was to be and was $ —, all of which the plaintiff has paid in full, to the defendant Nashville Chattanooga and St. Louis Railway Com-[fol. 37] pany as soon or almost as soon as the shipment reached Murray Ky., and defendant paid same before he looked at or inspected the goods to ascertain their condition and also ascertain

whether or not they were all there that he delivered to the defendant at the place of consignment, the following named articles were damaged in value in shipping by rough handling and abuse by the defendants in the following amounts in money one Piano damaged $65. one Library case $15. two rocking chairs $7. small rocking chair $2. one child's bed $2.50 one oil stove $5. one baby high chair $1.50, one side board $3. one dresser $2. one wind shield for car $17.50, one fender for car $6. one back curtain for car $4, each of said above enumerated articles of property is damaged in the above amount aggregating the sum of $130.50 damages for which the defendant Nashville Chattanooga & St. Louis Railway Co. owes this plaintiff, and the following articles valued as follows were never accounted for by the defendant Nashvl Chattanooga, & St. Louis Railway Co., and were not by it delivered to the consignee, the plaintiff at Murray, Ky. and has not been to this date, the correct list of same together with each article together with its respective value follows, one set of Ford Coils $10, three new casings 30x3½ $48. eight bed quilts seven of which were hand made $40. one pair or set of bed springs $3.50 three suits of men's cloths $60 one man's hat $3. seats and light lost off of Car $25. one set of carpenters tool $4. said lost articles of the value of $193.50 in the aggregate each and all of which were delivered to the defendant in good condition and said defendant Nashville, Chattanooga and St. Louis Railway Company is now indebted to this plaintiff for said lost articles the said sum of $193.50 and the damages to the other articles above mentioned when added to the damages or loss for the articles lost amounts to the total sum of $324.00 all of which the defendant accepted at the *place* of consignment and agreed to deliver same or haul or transfer same from the place of consignment at Crowley La. to Murray, Ky. in good condition and said carrier said starting point gave to the consignee the plaintiff a receipt or bill of lading for same agreeing to deliver same to Murray from said place of consignment and this defendant received same under [fol. 38] said receipt thereby adopting said contract as its own and delivered same or a part of same in the condition above mentioned for the amount of freight charges mentioned all of which this plaintiff has paid in full wherefore plaintiff prays judgment against the defendant, for the sum of $324. and interest on same and his cost herein expended and all general and proper relief.

J. B. Gardner, by Thompson & Spieght, Attys.

STATE OF KENTUCKY,
Calloway County:

I, George Hart, Clerk of Calloway Circuit Court in and for County and State aforesaid do certify that the foregoing is a true and correct copy of the original petition now on file in my office in the case of J. B. Gardner against the Nashville, St. Louis & Chattanooga Railway Co. This the 26, day of June 1923.

(Signed) George Hart, Clerk Calloway Circuit Court.

[File endorsement omitted.]

A true copy.

This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 39] EXHIBIT TO PETITION

Following is a list of household goods shipped from Crowley, La., to Murray, Ky., on or about April 1st. 1920:

1. Shuman Piano.
Library Case.
2 Rocking Chair.
1 Small Rocking Chair.
Dining room chairs (set of six).
3 straight chairs.
1 Child's bed.
1 Oil Stove.
1 Wood heater.
1 Baby High chair .
1 Side board.
1 dresser.
3 Automobile casings 30 by 3½.
1 box of quilts.
1 box of other bedding.
1 box mattresses.
2 set of bed springs.
3 trunks of wearing apparel.
Kit of carpenter tools.
1 Ice cream freezer.
1 box dining room dishes.
1 box of stove vessels.
2 tables.
1 Wash stand.
1 try-cycle.
2 water buckets.
1 Large rug.
3 small rugs.
1 sewing machine.
1 refrigerator.
1 box of books.
3 Alladdin Lamps.

A true copy.

This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 40] IN CIRCUIT COURT OF CALLOWAY COUNTY

[Title omitted]

JUDGMENT—Filed July 2, 1923

Ordered that this action be dismissed without prejudice.

A copy. Attest:
(Sgd.) George Hart, Clerk Calloway Circuit Court.

[File endorsement omitted.]

[fol. 41] IN DISTRICT COURT OF ACADIA PARISH

JOHN B. GARDNER

vs.

LOUISIANA WESTERN RAILROAD COMPANY

ANSWER—Filed March 15, 1923

Now into this Honorable Court, through its undersigned counsel, comes the Louisiana Western Railroad Company and makes answer to the demand of plaintiff as follows:

Paragraph One

In answer to Paragraph One of plaintiff's petition, it admits same.

Paragraph Two

In answer to Paragraph Two of plaintiff's petition, it denies same, admitting, however, that it is a railroad corporation, operating a line of railroad through the Parish of Acadia.

Paragraph Three

In answer to Paragraph Three of plaintiff's petition, it denies same, although admitting that plaintiff delivered to it a lot of household goods and two Ford automobiles for shipment in the car stated in said Paragraph Three as shown by the bill of lading attached to plaintiff's petition.

Paragraph Four

In answer to Paragraph Four of plaintiff's petition, it denies same.

Paragraph Five

In answer to Paragraph Five of plaintiff's petition, it denies same.

Paragraph Six

In answer to Paragraph Six of plaintiff's petition, it denies same, by reason of lack of sufficient information to justify a belief in regard to the allegations in question.

Paragraph Seven

In answer to Paragraph Seven of plaintiff's petition, it denies same.

Wherefore, it prays that the demand of plaintiff be rejected at his costs.

[fol. 42] By Its Attorney, (Sgd.) Philip S. Pugh.

Sworn to by Philip S. Pugh. Jurat omitted in printing.

[File endorsement omitted.]

A true copy.

This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 43] In District Court of Acadia Parish

[Title omitted]

Plea of Prescription—Filed May 8, 1922

Now into this Honorable Court, through its undersigned counsel, come the defendant the Louisiana Western Railroad Company, and before plea pleaded, excepts to the petition of plaintiff on the following ground:

1

That the petition of plaintiff filed herein shows on its face that it is barred by the Two years' prescription under Act No. 223 of the Acts of the General Assembly of the State of Louisiana for the year 1914 entitled an act "to fix the prescription of actions by or against common carriers arising from erroneous freight charges and loss of and damages to freight," which prescription of Two years is hereby specially pleaded.

Wherefore, it prays that its plea of prescription be maintained and plaintiff's suit be dismissed at his costs.

By its Attorney, (Sgd.) Philip S. Pugh.

I, Philip S. Pugh, do hereby certify that I am the attorney of the defendant in the above numbered and entitled cause and that the

above plea of prescription is filed by me in good faith and not for the purpose of delay.

(Sgd.) Philip S. Pugh, Attorney Louisiana Western Railroad Company.

[File endorsement omitted.]

A true copy.

This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 44] In District Court of Acadia Parish

[Title omitted]

Judgment—Filed July 24, 1922

A plea of prescription having been filed by defendant in this cause and same having been argued and submitted and the law being in favor of the said plea and of said defendant,

It is therefore ordered, adjudged and decreed that the plea of prescription of Two (2) years filed herein be and it is hereby maintained and plaintiff's suit dismissed at his costs.

Done and rendered, in open court, at Crowley, Louisiana, May 10th, 1922, read and signed, in open court, at Crowley, Louisiana, July 24th, 1922.

(Sgd.) W. Campbell, Judge Eighteenth Judicial District Court of Louisiana.

[File endorsement omitted.]

A true copy.

This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 45] In District Court of Acadia Parish

[Title omitted]

Motion for New Trial—Filed May 13, 1922

Now into this Honorable Court comes the plaintiff, thru his undersigned counsel, and moves for a new trial on the plea of prescription herein filed by the defendant, on the ground that the judgment herein rendered is contrary to the law and the evidence.

Wherefore, mover prays for new trial, for cost, and for general relief.

By His Attorneys, (Sgd.) Medlenka & Bruner.

I hereby certify that I am one of the attorneys for mover in the above and foregoing motion, and that the same is filed in good faith, and not for the purpose of delay.

(Sgd.) J. G. Medlenka.

[File endorsement omitted.]

[fol. 46] IN COURT OF APPEAL OF LOUISIANA

[Title omitted]

FIRST OPINION OF COURT OF APPEAL.—Filed Dec. 11, 1922

ELLIS, J.:

Plaintiff sued defendant for damages arising from a shipment of goods by himself, consigned to himself, at Murray, Kentucky. The goods were shipped from Crowley on April 3rd, 1920, and are alleged by plaintiff to have reached their destination July 9th, 1920.

The defendant filed the plea of prescription of two years, based on the Act No. 223 of 1914. This plea was sustained by the District Judge, and plaintiff has appealed to this Court.

That the shipment was interstate, the bill of lading shows. This being so, we are of the opinion that the prescription pleaded and sustained has been superseded by the Carmack Amendment, and therefore inapplicable to the case. Plaintiff's counsel cites the following authorities in support of this view, which we quote:

"No law or public policy of a state can serve to set aside or change the rates, rules and regulations of a carrier affecting interstate commerce, specified in its duly issued, filed and published tariffs." 223 U. S. 1, (56 L. Ed. 327, at page 348) Mondon vs. Ny. N. H. & H. R. Co., 38 L. R. A. U. S. 44, also I. N. C. C. A. 875, under title second Employers' Liability cases.

"The bill of lading issued by the defendant corporation contains this clause, as part of the contract.

"Sec. 3, par. 3.

"Except where the loss, damage or injury is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing, to the originating or delivering carrier, within six months after delivery of the property (or in case of export traffic) after a reasonable time after delivery has elapsed; *and suit for loss,* [fol. 47] *damage or delay shall be instituted only within two years and one day after delivery of the property,* or in case of failure to make delivery then within two years and one day after a reasonable time for delivery has elapsed." (Italics ours.)

"8604 A, Carmack amendment—P. 1373, U. S. Compiled Statutes, says:

"That it shall be unlawful for any such common carrier *to provide* by rule, contract, regulation or otherwise, *a shorter period* for giving

notice of claims than ninety days, and for filing claims for a shorter period than four months, *and for the institution of suits than 2 years.*"

"Bills of lading issued by any common carrier for a transportation of goods in any territory of the United States * * * interstate * * * shall be governed by this Act." (Italics ours.)

"The liability sought to be enforced is the "liability" of an interstate carrier for loss or damages under an interstate contract of shipment declared by the Carmack Amendment to the Hepburn Act of June 29, 1906. The validity of any stipulation in such a contract which involves the construction of the statute and the validity of the limitation thereby imposed, is a Federal question, to be determined under the General law, and as such is withdrawn from the field of state law or legislation." 227 U. S. (57 L. Ed. 690) M. K. & T. vs. Harriman.

"226 U. S. 491 (57 L. Ed. 314) Adams Exp. Co. vs. Croninge.

"Congress has rightfully assumed jurisdiction of the subject matter herein, therefore state laws, covering same, must yield.

"State laws limiting time for bringing suit on interstate shipments are superceded by Carmack Amendment.

"227 U. S. 658 (57 L. Ed. 690) M. K. & T. vs. Harriman.

"Federal Statutes forbid a carrier by rule, contract, regulation or otherwise, to make a limitation of less than 2 years, and in so doing it may truly be said to prescribe that period as a minimum. It is true that it gives the carrier the right to establish a longer period, if it chooses, which it has not chos*e*d to do, except to the extend of one day, and it may be where there is a valid contract between the carrier and the shipper for a period longer, even by so short a time as [fol. 48] one day, that it would be improper to speak of the limitation as "prescribed by the statute." 271 F. R. 96, Lazarin vs. Nvlent.

"The Carmack Amendment, p. 1313, Section 8604 a, U. S. Comp. St., fixes two years as the shortest period in which sommon carriers can require suits to be brought against it for loss or damage. As stated in the foregoing authority, the two years fixed by the Federal Statute is the minimum, which the carrier may extend, but can not diminish.

"The contract sued upon gives the plaintiff two years and one day after delivery in which to bring suit, and as the state statute, Act 223 of 1914, of Louisiana, does not apply, and the delivery was made on or about July 9, 1920, and suit brought April 12, 1922, citation served April 13, 1922, which was within the period fixed by the contract of shipment entered into between the defendant railroad and the plaintiff, and the Federal Statute, the defendant's plea of two years prescription under the state statute does not apply, and the Court aquo erred in maintaining the same."

In addition to the authorities cited by plaintiff's counsel, as above quoted, we refer to the case of Henderson vs. Kansas City Southern Rv. Co. 147 La., — 85 S. R. 625. O'Neil, Justice, as the organ of the Court, seems to have brought that Court into accord with the authorities cited by him from the U. S. Court, and leaves no room

to doubt that the special regulations and policies of particular states, upon the subject of the carrier's liability for loss or damage to interstate shipments, and the contracts of carriers with respect thereto, have superceded.

The judgment appealed from is reversed, the plea of prescription overruled, and the case remanded to be proceeded with in accordance with law.

Baton Rouge, Louisiana, December 6, 1922.

A true copy. 12-8-1922. (Signed) D. J. Sanchez, Dy. Clerk.

[File endorsement omitted.]

Filed 12-6, 1922. (Signed) D. J. Sanchez, Dy. Clerk.

A true copy.

This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 49] In District Court of Acadia Parish

[Title omitted]

Supplemental Answer—Filed Nov. 26, 1923

Now into this Honorable Court, through its undersigned counsel, comes the Louisiana Western Railroad Company and moves to amend and supplement its original answer herein as follows:—

Paragraph One

It hereby reiterates and confirms its original answer herein filed.

Paragraph Two

And answering further it avers that the said plaintiff is indebted unto it for an undercharge of One Hundred Three ($103.00) Dollars for unpaid freight on the shipment of freight on which damages are herein claimed, One Hundred ($100.00) Dollars for undercharge on freight and Three ($3.00) Dollars for war tax and that your defendant is entitled to recover a judgment against the said plaintiff therefor; that the said amount is due and unpaid and that your defendant, in reconvention, is entitled to recover same.

Wherefore, it prays that this amended and supplemental answer be filed and allowed; that the plaintiff's case be dismissed and that on its reconventional demand, it do have and recover judgment against

John B. Gardner in the sum of One Hundred Three ($103.00) Dollars with legal interest from judicial demand.

By its Attorney, (Signed) Philip S. Pugh.

[fol. 50] Sworn to by Philip S. Pugh. Jurat omitted in printing.

In District Court of Acadia Parish

Order to File Supplemental Answer

Considering the foregoing answer, affidavit and the law, let this amended and supplemental answer be filed and allowed.

Done an dgranted at Chambers, at Crowley, Louisiana, this 26th. day of November, 1923.

—— ——, Judge Eighteenth Judicial District of Louisiana.

[File endorsement omitted.]

A true copy.

April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 51] In District Court of Acadia Parish

[Title omitted]

Plea of Prescription—Filed March 13, 1924

Now into this Honorable Court comes plaintiff, thru his undersigned counsel, and pleads prescription of two years, under act 223, of 1914, of the General Assembly of Louisiana, in bar of defendant's reconventional demand for recovery for under charge of and unpaid freight charges.

Wherefore mover prays that his plea of prescription be maintained, and that defendant's reconventional demands be rejected and dismissed, at its cost.

By His Attorneys, (Signed) Medlenka & Bruner.

[File endorsement omitted.]

A true copy.

This Apr. 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 52] IN DISTRICT COURT OF ACADIA PARISH

[Title omitted]

JUDGMENT—Filed March 18, 1924

This case was regularly tried, argued and submitted, and for the reason of the law and the evidence being in favor of the plaintiff, and against the defendant;

It is ordered, adjudged and decreed that the plaintiff, John B. Gardner, do have judgment and recover of the Louisiana Western Railroad Company, in the full sum of Three Hundred Twenty-Four ($324.00) Dollars, with five per cent interest from July 9, 1920 until paid, and all costs.

It is further decreed that the plaintiff's plea of prescription against the reconventional demands of the defendant be maintained, and that the said reconventional demands be and the same are hereby rejected, at defendant's cost.

Thus done, read and signed in open court, at Crowley, Louisiana, this 18th day of March, A. D., 1924.

(Signed) W. Campbell, Judge.

[File endorsement omitted.]

A true copy.

April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 53] IN COURT OF APPEAL OF LOUISIANA

[Title omitted]

SECOND OPINION—Filed in District Court of Acadia Parish Dec. 30, 1924, in Court of Appeal of Louisiana Jan. 5, 1925

ELLIOTT, J:

On a previous appeal in this case from a judgment against plaintiff John B. Gardner sustaining the prescription of 2 years pleaded against this action by the defendant Louisiana Western Railroad Company under the law of this state Act 223 of 1914, the judgment appealed from was reversed, the exception and plea of prescription overruled and the case remanded to the lower court for further proceedings as the law provides.

Plaintiff's demand is for damages alleged to have been caused by the injury to various articles and the complete loss of others belonging to plaintiff in an interstate shipment of same by him as freight consigned to himself at a point called Murray in the state of Kentucky; defendant as the initial carrier receiving the freight at Crowley in the parish of Acadia.

Defendant denies the injuries and losses alleged and in an amended answer urges against plaintiff a demand in reconvention for $100.00 as an undercharge on the freight and $3.00 as war tax; total $103.00.

Plaintiff in turn pleads and urges against defendant's demand in reconvention the prescription of 2 years under the law of this state Act 223 of 1914.—The lower court after trial on the merits maintained the prescription of 2 years urged by plaintiff against defendant's demand in reconvention and rendered jugment in favor of the plaintiff for $324.00 with legal interest from July 9th 1920 until paid.

Defendant has appealed.

A plea and exception or res adjudica was filed in this court by the plaintiff and appellee Gardner as to the question of prescription which defendant had filed in the lower court based on Act 223 of 1914 and which the lower court had sustained but which this court [fol. 54] overruled on appeal; presumably because of defendant's argument and brief in this court in which this plea and prescription of 2 years under Act 223 of 1914 is again urged by defendant, on the theory we suppose that the ruling of the lower court and of this court on the question of prescription was an interlocutory decree and therefore the ruling subject to review; because the record does not show any new exception and plea of prescription on part of the defendant.

In regard to the plea and exception of prescription of 2 years based on Act 223 of 1914 urged by defendant and which was before this court considered and decided on the previous appeal, we do not accept as correct defendant's contention that the judgment of the lower court sustaining the prescription of 2 years pleaded and dismissing the suit; which judgment was appealed from and on appeal reversed, the plea of prescription overruled and the case remanded, was an interlocutory judgment, subject to further review; but as a final judgment, disposing of that question and closing it against further review on appeal in the same case; but we have for the purposes of this appeal, pretermitted that question and have re-examined it anew as if it had not been formerly considered at all. The shipment in question was interstate, therefore comes within the Act of Congress"—Provided further, that it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving of claims than ninety days, for the filing of claims than four months and for the institution of suits than two years, such period for the institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof, specified in the notice."

Plaintiff alleges that his claim was disallowed October 28th 1920 but the record shows that this suit was filed on April 12th 1922 and defendant cited on April 13th 1922.—The plaintiff testifies without contradiction that the goods were not delivered to him at Murray Kentucky until April 15th 1920.—We conclude that it was impossible for plaintiff's claim to be disallowed before the goods were delivered to him; consequently although the record does not

show when notice in writing was given to plaintiff that his claim [fol. 55] had been disallowed; if given at all; yet as two years did not elapse between the day of delivery and the day defendant was cited, the prescription urged by defendant is not good and can not be sustained.—We will not write in this opinion the views expressed by us in our former opinion; but will hold, adding thereto the above statement of fact, that our former opinion was correct and properly disposes of the prescription pleaded under the Law.

In regard to the merits of the controversy, the preponderance of the evidence establishes the injuries and losses claimed by plaintiff. It is not easy to fix the proper sum which should be paid on account of injuries to and the loss of articles such as claimed by plaintiff; but we are satisfied that the sum allowed by the district judge is correct under the evidence and will not disturb his judgment in that respect.

The shipment being interstate, the initial carrier is responsible under the law governing interstate shipments for the entire injury and loss sustained as far as the shipper is concerned.

An under charge in freight $100.00 and war tax $3.00 is claimed by defendant and established by the evidence; total $103.00.

The district court maintained plaintiff's plea and exception of prescription of 2 years under the law Act 223 of 1914 of this state against the demand, without reference to any law except that of offset and compensation. it can be said that plaintiff owed this additional sum as freight and war tax at the time the goods were received by him. He had been injured while his goods were in transit in a sum and amount not determined until he filed this suit April 12th 1922 in which he fixes the total sum due him on that account. As the judgment allows plaintiff interest from July 9th 1920; we conclude that this sum due on account of freight and war tax should be imputed as a credit and offset against the sum allowed plaintiff as of date July 9th 1920.—Such being our view the prescription urged by plaintiff against this demand is not applicable to bar or cut off the same.—The judgment appealed from will be amended in this respect so as to conform to our views.

It is therefore ordered, adjudged and decreed that the judgment be in favor of the plaintiff John B. Gardner and against the defendant Louisiana Western Railroad Company for $324.00 with legal interest [fol. 56] thereon from July 9th 1920 until paid less and subject to $103.00 as credit applied thereto July 9th 1920 and as thus amended that the judgment appealed from be affirmed. Defendant and appellant to pay the cost of the lower court; the plaintiff & appellee the cost of appeal.

Rendered in open court at Baton Rouge this Dec. 30th. 1924.

[File endorsement omitted.]

A true copy.

This Apr. 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 57] IN COURT OF APPEAL OF LOUISIANA

[Title omitted]

PETITION FOR REHEARING—Filed Jan. 9, 1925

Now, into this Honorable Court, through its undersigned counsel, comes the defendant herein, the Louisiana Western Railroad Company, and moves for a rehearing in the above numbered and entitled cause, in so far as the Court has refused to maintain the plea of prescription, filed by it, under the law of Louisiana, Act 223 of 1914, page 421, which briefly provides that the two years' prescription shall apply to all actions for loss of, or damage to, shipments of freight; said prescription to run from the date of shipment; and has held that the State law of prescription does not apply, but that the clause inserted in the bill of lading under the Inter-State law governs, and therefore the State law has no application.

The record shows that the goods were shipped from Crowley, Louisiana, to Murray, Kentucky, on April 3d, 1920; and that this suit was filed on April 12, 1922, more than two years from the date of shipment.

That there is error in said ruling, as under the State law prescription can not be renounced in advance, under Article 3460 of the Revised Civil Code; nor can the clause in the bill of lading be interpreted as a renunciation of prescription, or as a law of limitation.

That the said Inter-State law (Cummings Act), containing the uniform bill of lading, was neither intended to be, nor was it either a statute of limitation or a waiver of the State statute of prescription. This statute, however, has been amended by Section 206-A of the Transportation Act of 1920, which limits such action as is herein brought, to the period of limitation now prescribed by State or Federal statute; but not later than two years from the date of the passage of the act (February 28, 1920).

It has been held by the Supreme Court of the United States that a State statute is good against an action brought for damages under [fol. 58] the Anti-Trust or Combination law.

See Chattanooga Foundry & P. Works v. City of Atlanta, 203 U. S. 390; (L. E. Vol. 51, page 241).

That reference is here made to the briefs filed by counsel for defendant on the question of prescription, which contain many citations of authority maintaining the proposition herein advanced; that the State statute of prescription is applicable; that the clause in the bill of lading is not a statute of prescription; and that, if there is any Federal prescription, it would fall under Section 206-A of the Transportation Act of 1920; and that this prescription should also be applied.

Wherefore, it prays that it be granted a rehearing herein.
Respectfully submitted, (Signed) Philip S. Pugh, Denegre, Leovy & Chaffe, Attorneys of Defendant and Appellant.

[File endorsement omitted.]

A true copy

This April 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 59] IN COURT OF APPEAL OF LOUISIANA

[Title omitted]

On Application for a Rehearing

ORDER DENYING PETITION FOR REHEARING—Filed in District Court of Acadia Parish Feb. 18, 1925; in Court of Appeal of Louisiana March 2, 1925

Rehearing refused.
Baton Rouge, Louisiana, Feb. 18, 1925.
(Signed) Julian Mouton, Paul Leche, Clay Elliott, Judges.

[File endorsements omitted.]

A true copy.

This Apr. 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 60] IN SUPREME COURT OF LOUISIANA

No. 27131

JOHN B. GARDINER

vs.

LOUISIANA WESTERN RAILROAD COMPANY

Applying for Writs of Certiorari and Review to the Court of Appeal for the First Circuit, State of Louisiana, in the Cause Entitled

No. 867

JOHN B. GARDINER

vs.

LOUISIANA WESTERN RAILROAD COMPANY

PETITION FOR WRITS OF CERTIORARI AND REVIEW

To the Honorable the Supreme Court of the State of Louisiana:

The petition of the Louisiana Western Railroad Company, a corporation organized under the laws of the State of Louisiana and domiciled in the Parish of Orleans, in the said State, with respect shows:

I

That on the 13th day of April, 1922, John B. Gardiner, plaintiff herein, instituted suit in the 18th Judicial Court, Parish of Acadia, State of Louisiana, against your petitioner herein, Louisiana Western Railroad Company, (a common carrier of freight and passengers for hire by steam railroad, engaged in interstate and intrastate commerce) for the sum of three hundred and twenty-four dollars ($324.-00) for alleged damage to and shortage from a shipment of freight made by the said Gardiner from Crowley, Louisiana, to himself at Murray, Kentucky, on April 3rd, 1920, under a through bill of lading issued on that date by your petitioner as initial carrier.

II

That on May 8th, 1922, your petitioner filed an exception of prescription to the said suit based on Act No. 223 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1914, providing that:

[fol. 61] "All actions for loss of or damage to shipments of freight shall be prescribed by two years, said prescription to run from the date of shipment,"

more than two years having elapsed between the date of shipment and the institution of the suit.

III

That in due course the said exception was argued and submitted to the Court, which on May 10, 1922, entered a judgment maintaining the plea and dismissing the suit.

IV

That from such judgment plaintiff appealed to the Court of Appeal for the First Circuit, and after a due hearing that Tribunal on December 6th, 1922, reversed the judgment of the District Court, overruled the exception of prescription and remanded the case.

V

That on March 15, 1923, your petitioner filed an answer to the said suit, and on Nov. 26, 1923, a supplemental and amended answer, petitioner in its said responsive pleadings denying plaintiff's claim, reasserting the exception of prescription and setting up a reconventional demand of One Hundred Three Dollars ($103), representing an undercollection in freight charges on the said shipment.

VI

That on March 18, 1924, the said cause was tried by the District Court and judgment was entered in favor of plaintiff and against your petitioner in the full sum claimed, petitioner's reconventional demand being dismissed on a plea of prescription of two years filed by plaintiff against the said demand.

VII

That from this judgment your petitioner appealed to the Court of Appeal for the First Circuit, State of Louisiana, in which Court the case was duly argued and submitted, your petitioner urging chiefly its same exception of prescription and its reconventional demand.

[fol. 62]

VIII

That the said Court of Appeal on December 30th, 1924, entered its judgment affirming the judgment of the District Court, but reducing the amount thereof by the One Hundred and Three Dollars ($103) claimed in your petitioner's reconventional demand, this reduction being made by way of compensation and offset and not by reconvention, and the Court specifically overruling again your petitioner's renewed plea of prescription.

IX

That your petitioner on Jan. 9, 1925 applied to the said Court of Appeal for a rehearing, which application was on February 18th, 1925, denied.

X

That the sole purpose of this application is to have this Court review the judgment of the said Court of Appeal in two particulars:

1st. With regard to your petitioner's exception of prescription, and

2nd. With regard to your petitioner's reconventional demand, both of which points are purely matters of laws, no question being raised as to the facts or merits of the case.

XI

That in overruling your petitioner's plea of prescription of two years from the date of shipment, embodied in Act No. 223 of 1914, hereinabove quoted, the said Court of Appeal apparently did so on the strength of the following provision in the conditions of the bill of lading covering the shipment in question:

"Suits for loss, damage or delay shall be instituted only within two years and one day after delivery of the property,"

the uncontradicted evidence showing that the said shipment had been delivered on April 15th, 1920, which was less than two years and one day prior to the filing of the suit.

That in giving any effect whatsoever to the clause in the bill of lading the said Court of Appeal erred, for the said clause was absolutely null, void and illegal by reason of the following provision of [fol. 63] paragraph 11 of Section 20 of the Interstate Commerce Act, (Act of February 4, 1887, 25 Stat. at L. 379) as amended by the Transportation Act 1920 (Act of February 28, 1920, 41 Stat. L. 494):

"That it shall be unlawful for any * * * common carrier to provide by rule, contract, regulation, or otherwise a shorter period * * * for the institution of suits than two years, such period for institution of suits to be commuted from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice,"

since the clause actually inserted in the bill of lading forbade the institution of suits after a shorter time than that permitted by the law, as above quoted, with reference to the character of contractual limitations of this sort, which statute specifically made unlawful any contracts in violation thereof.

XII

That it may be contended that the said Court of Appeal overruled petitioner's exception of prescription not because of the provision actually inserted in the bill of lading, but because of the Federal statute quoted in the last article hereof with reference to such pro-

visions; but that in regarding the said statute as in itself a prescriptive statute the said Court fell into error, because the statute does not purport to prescribe a prescriptive term after which suit cannot be brought, but simply limits the freedom of carriers in making contracts as to the time for bringing such suits against them.

XIII

That the issue presented by the application is one of great importance to the railroads and the shipping public, involving as it does the interpretation not only of a bill of lading provision, but of state and federal statutes.

XIV

That your petitioner has given due notice of its intention to apply for a writ of review herein, as appears from the annexed affidavit and copy of said notice; that petitioner also files herewith, as required by law and by the rules of this Court, an assignment of the [fol. 64] errors complained of in the judgment of the Court of Appeal sought to be reviewed, and that petitioner also attaches hereto, as required by law and the rules of this Court, certified copies of the following documents found in the record in this cause:

1. The original petition filed by Gardiner in the District Court.
2. The original exception filed by your petitioner Louisiana Western Railroad Company.
3. The bill of lading covering the shipment in question.
4. The judgment of the District Court maintaining the said exception.
5. The opinion and decree of the Court of Appeal reversing the judgment of the District Court and overruling the exception and remanding the case.
6. The answer of your petitioner filed in the District Court.
7. The supplemental and amended answer of your petitioner filed in the District Court, including its reconventional demand.
8. The judgment of the District Court on the merits.
9. The opinion and decree of the Court of Appeal on your petitioner's appeal from such judgment, incidentally overruling petitioner's exception of prescription.
10. The opinion and decree of the Court of Appeal denying petitioner's application for a rehearing.

Wherefore, Petitioner prays that this Honorable Court may be pleased to issue Writs of Certorari and Review herein directed to the Court of Appeal for the First Circuit, commanding said Court to send to this Tribunal a certified copy of the record herein, to the end that the same may be examined by this Court.

Petitioner further prays that on due consideration of this cause that the judgment of the Court of Appeal and the District Court be finally set aside and that the exception of prescription filed by your petitioner, Louisiana Western Railroad Company, be maintained

and plaintiff's suit dismissed, and further that the Reconventional Demand of your petitioner, Louisiana Western Railroad Company, [fol. 65] be maintained and that there be judgment against plaintiff, John B. Gardiner in the sum of One Hundred and Three ($103.00) Dollars, and for costs and *all general and equitable relief.*

(Signed) Denegre, Leovy & Chaffe, Philip S. Pugh, Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Acadia:

Philip S. Pugh, being duly sworn, deposes and says that he is an Attorney at Law, and is one of the Attorneys for petitioner, Louisiana Western Railroad Company; that he prepared the foregoing petition for a writ of review; and that all of the allegations of fact therein contained are true and correct to the best of his information, knowledge and belief; that due notice, in accordance with the rules of this Honorable Court has been given of the intention to apply for a writ of review herein, said notice having been addressed to the plaintiff in the suit of John B. Gardiner vs. Louisiana Western Railroad Company, a copy of said notice being hereto annexed, and same having been filed in the office of the Clerk of Court of the Fifteenth Judicial District in and for the Parish of Acadia; in the office of the Clerk of Court, Calcasieu Parish, Ex-Officio Clerk of Court of the Court of Appeals, First District, First Circuit; and also in the office of the Clerk of Court of East Baton Rouge Parish, Ex-Officio Clerk of the Court of Appeals, First District, First Circuit, and that due notice of said application has also been mailed to the attorneys for plaintiff.

He further swears that the Louisiana Western Railroad Company has no agent or representative within the Parish of Acadia, who can make this affidavit.

(Signed) Philip S. Pugh.

Sworn to and subscribed before me at Crowley, Louisiana, [fol. 66] on this 13th day of March, 1925. (Signed) Lawrence G. Pugh, Notary Public.

IN COURT OF APPEAL OF LOUISIANA

[Title omitted]

NOTICE OF PETITION FOR CERTIORARI

To John B. Gardiner, Plaintiff:

You are hereby notified that, as the Court of Appeal, First District, First Circuit, has finally refused a rehearing in the above numbered and entitled cause, made in behalf of defendant and appellant, it is the intention of the Louisiana Western Railroad Company, defend-

ant and appellant in the above suit, to apply to the Supreme Court of Louisiana for a writ of certiorari or review, in order that the said Court may pass upon and determine the question as to whether the claim of the said plaintiff in the above suit is not prescribed under the law of Louisiana.

Dated and signed at Crowley, Louisiana, this 6th day of March, 1925.

Louisiana Western Railroad Company, by Denegre, Leovy & Chaffe and Philip S. Pugh, Attorneys.

[fol. 67] IN SUPREME COURT OF LOUISIANA

[Title omitted]

ASSIGNMENTS OF ERROR

Louisiana Western Railroad Company, defendant and appellant in connection with its petition for a Writ of Review and certiorari, makes the following assignment of errors which it avers are to be found in the opinion, judgment and decree of the Court of Appeal for the First Circuit, State of Louisiana, in his matter.—

I

That the said Court erred in overruling the exception of prescription filed by your petitioner based on Act No. 223 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1914.

II

The said Court erred in not entering judgment in favor of your petitioner and against John B. Gardiner, plaintiff, in the sum of one hundred and three ($103.00) dollars on petitioner's reconventional demand in that amount.

[fol.68] [File endorsement omitted]

IN SUPREME COURT OF LOUISIANA.

[Title omitted]

ORDER DENYING PETITION FOR WRIT OF CERTIORARI—Filed Mar. 16, 1925

Denegre, Leovy & Chaffe and Philip S. Pugh, Attorneys for Applicant.

New Orleans, March 30th, 1925.

"Writ refused—judgment correct."

(Signed) D. N. T., W. O., J. R. L., St. Paul, W. G. R., H. F. B.

[fol. 69] IN SUPREME COURT OF LOUISIANA

CLERK'S CERTIFICATE

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify the foregoing (9) pages to be a true and correct copy of the application of the Louisiana Western Railroad Company (with affidavit, copy of notification and assignment of errors attached) filed in this the Supreme Court of Louisiana on the 16th day of March, 1925, for certiorari, or writ of review, to the Court of Appeal, parish of Acadia, in the cause entitled: John B. Gardiner vs. Louisiana Western Railroad Company, which application is now on the files of this Court under the No. 27,131.

In testimony whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 22d day of April, Anno Domini, One thousand, nine hundred and twenty-five.

Paul E. Mortimer, Clerk Supreme Court of Louisiana. (Seal of Supreme Court of the State of Louisiana.)

[fol. 70] IN SUPREME COURT OF LOUISIANA

JUDGE'S CERTIFICATE TO CLERK

I, Charles A. O'Niell, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 22d day of April, Anno Domini, One thousand, nine hundred and twenty-five.

Charles A. O'Niell, Chief Justice Supreme Court of Louisiana. (Seal of Supreme Court of the State of Louisiana.)

[fol. 71] IN SUPREME COURT OF LOUISIANA

CLERK'S CERTIFICATE TO JUDGE—Filed April 22, 1925

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana do hereby certify that the Supreme Court of Louisiana is the highest Court of law in Louisiana, and that the Honorable Charles A. O'Niell is the Chief Justice of said Court, and that his signature to the foregoing certificate is genuine.

In testimony whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 22d day

of April, Anno Domini, one thousand, nine hundred and twenty-five.

Paul E. Mortimer, Clerk Supreme Court of Louisiana. (Seal of Supreme Court of the State of Louisiana.)

[File endorsement omitted.]

[fol. 72] IN SUPREME COURT OF LOUISIANA

JUDGEMENT—Filed April 2, 1925

[Title omitted]

Writ refused. Judgment correct.

A true copy.
Clerk's Office, New Orleans, March 31, 1925.
(Signed) Paul E. Mortimer, Clerk.

[File endorsement omitted.]

A true copy.
This Apr. 22, 1925.

Fred S. Le Blanc, Deputy Clerk.

[fol. 73] IN COURT OF APPEAL OF LOUISIANA

CLERK'S CERTIFICATE

STATE OF LOUISIANA,
Parish of East Baton Rouge:

Clerk of Court's Office

I, W. C. Young, Clerk of Court in and for the Parish of East Baton Rouge, State of Louisiana, and Ex-officio Clerk of the Circuit Court of Appeal, First Circuit, State of Louisiana, do hereby certify that the foregoing seventy-two (72) pages contain and form a full, true, correct and complete transcript of the record, proceedings, orders and assignment of errors in accordance with præcipe filed by counsel in this case, said original præcipe being included in this transcript, in a cause entitled John B. Gardiner vs. Louisiana Western Railroad Company, No. 867, on the Docket of the Circuit Court of Appeal, First Circuit, State of Louisiana, as the originals of same appear in said record, except the petition for writ, assignment of errors, writ, citation and agreement of counsel, which are sent up in the original.

I further certify that this Court, i. e., the Circuit Court of Appeal, First Circuit, State of Louisiana, has no official seal, and that, therefore, I can not affix an official seal hereto.

Witness my hand at the City of Baton Rouge, Louisiana, on this 12th day of May, A. D. 1925.

W. C. Young, Clerk, by Fred S. Le Blanc, Deputy Clerk.

[fol. 74] IN SUPREME COURT OF UNITED STATES

STIPULATION OF COUNSEL AND ADDITION TO RECORD—Filed Aug. 20, 1925

The annexed pleading, Plea of Res Adjudicata, filed by the plaintiff and appellee before the above entitled Court of Appeals, having been unintentionally omitted from the original præcipe for transcript due to the fact that at the time of preparing said original præcipe, it was detached from the original record, the undersigned, Medlenka & Bruner, counsel for defendant in error, and Philip S. Pugh, counsel for plaintiff in error do hereby agree that said "plea of res adjudicata" be added to and constitute a part of the transcript to be made up and prepared, or be added thereto as "Addendum" for the hearing of the said cause.

Dated Crowley, Louisiana this 17th day of July, A. D. 1925.

P. J. Chappius, Medlenka & Bruner, J. G. Medlenka, Howard E. Bruner, Attorneys for Defendant in Error. George Denegre, Victor Leovy, Henry H. Chaffe, Harry McCall, Jas. H. Bonns, Philip S. Pugh, Attorneys for Plaintiff in Error.

[fol. 75] Now into Court, thru his undersigned, comes John B. Gardner, plaintiff and appellee in the above entitled and numbered cause, and with respect shows:

1

That as shown by the record in this cause, the plea of prescription filed, and now sought to be maintained by the defendant, has been, by your Honorable Court, heretofore overruled; that, therefore, this question, having been definitely decided, by judgment of this Honorable Court, is res judicata, and your appearer now specially pleads, in bar of the defendant's attempt to have this Honorable Court go into or discuss the plea of prescription filed by defendant, this exception of res judicata.

Wherefore, you appearer prays that this plea be maintained, and defendant's plea of prescription overruled.

He prays for all general and equitable relief.

By His Attorneys, Medlenka & Bruner.

A true copy.
July 18th, 1925.

Fred S. Le Blanc, Deputy Clerk Circuit Court of Appeal, First Circuit, State of Louisiana. Seal of the Clerk of the Parish of East Baton Rouge, La.

[fol. 76] [File endorsement omitted.]

Endorsed on cover: File No. 31,215. Louisiana Court of Appeal for the First Circuit. Term No. 494. Louisiana and Western Railroad Company, plaintiff in error, vs. John B. Gardiner. Filed May 22d, 1925. File No. 31,215.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, A. D. 1924. 1925

No. 1[redacted]4[redacted] 120

LOUISIANA WESTERN RAILROAD COMPANY,
Petitioner,

versus

JOHN B. GARDINER,
Respondent.

Petition for Writ of Certiorari to Be Addressed to the Court of Appeal for the First Circuit, State of Louisiana, and Brief in Support Thereof.

Philip S. Pugh,
George Denegre,
Victor Leovy,
Henry H. Chaffe,
Harry McCall,
Jas. Hy. Bruns,
Attorneys for Petitioner.

New Orleans,
June, 1925.

Montgomery-Andree Printing Co., Inc. 307 Chartres Street, New Orleans, La.

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In the

SUPREME COURT OF THE UNITED STATES.

No. 1250

LOUISIANA WESTERN RAILROAD COMPANY,
Petitioner,

verusus

JOHN B. GARDINER,
Respondent.

In re: Louisiana Western Railroad Company Applying for Writ of Certiorari to the Court of Appeal for the First Circuit, State of Louisiana.

To the Honorable the Supreme Court of the United States:

The petition of Louisiana Western Railroad Company respectfully shows to this Court:

That your petitioner is greatly aggrieved by the final judgment and opinion of the Court of Appeal for the First Circuit, State of Louisiana, in the case of John B. Gardiner vs. Louisiana Western Railroad Company, No. 867 of the docket of the said Court, wherein the

said Court held in an action for loss of and damage to an interstate shipment against a common carrier for hire that Act No. 223 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1914, providing that

> "All actions for loss of or damage to shipments of freight, shall be prescribed by two years, said prescription to run from the date of shipment,"

was inapplicable (although more than two years from the date of shipment had elapsed before the institution of the said suit) by reason of:

1. Paragraph 11 of section 20 of the Interstate Commerce Act (Act of February 4, 1887, 24 Stat. at L. 379, as amended by Transportation Act 1920, Act of February 28, 1920, 41 Stat. at L. 456, 494), providing that:

> "It shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period * * for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice",

which the said Court construed as a Federal statute of limitations;

2. The following clause in the condition of the bill of lading covering the said shipment:

> "Suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property",

such period not having elapsed when this suit was brought, which clause the said Court regarded as supplanting and waiving the shorter state statute of limitations, all as more fully shown by the facts, including copies of pleas and judgments, hereinafter set forth, and by the opinion of said Court of Appeal embodied in the transcript of record filed in connection with writ of error herein, hereinafter referred to.

Petitioner avers that the portion of the Interstate Commerce Act relied on by the said Court as a statute of limitations is not a statute of limitations, but simply a restriction on the freedom of carriers in fixing "by contract, rule, regulation or otherwise" the time after which suit may not be brought; and that in so far as the clause of the bill of lading is concerned, that is rendered illegal, null and void by the language of the Interstate Commerce Act above quoted, since the bill of lading named a shorter period of limitation than that authorized by the statute to be provided "by rule, contract, regulation or otherwise."

Petitioner further insists that even had the bill of lading provision been legal and valid, the shorter limitation provided by the state statute was not thereby supplanted or waived, and should have been applied.

Petitioner now avers the facts and history of this case to be as follows:

That on April 12th, 1922, John B. Gardiner, respondent herein, instituted suit in the Eighteenth Judicial District Court for the Parish of Acadia, State of Louisiana, against your petitioner, Louisiana West-

ern Railroad Company, for the sum of Three Hundred Twenty-Four Dollars ($324.00) for loss of and damage to a shipment of household goods and two automobiles made on April 3rd, 1920, by the said Gardiner from Crowley, Louisiana, to himself at Murray, Kentucky, via your petitioner as the initial carrier (two through bills of lading covering the said articles being issued by petitioner), which said shipment in its damaged condition was by the last connecting carrier delivered to Gardiner at destination on April 15th, 1920.

That your petitioner in due course appeared and filed a plea based on Act No. 223 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1914, providing that:

> "All actions for loss of or damage to shipments of freight, shall be prescribed by two years, said prescription to run from the date of shipment."

That on May 10, 1922, the said District Court maintained petitioner's plea and dismissed the suit, the decree reading as follows:

> "A plea of prescription having been filed by defendants in this cause and same having been argued and submitted and the law being in favor of the said plea and of said defendant,
>
> "It is therefore ordered, adjudged and decreed that the plea of prescription of two (2)

> years filed herein be and it is hereby maintained and plaintiff's suit dismissed at his costs,"

from which judgment Gardiner took an appeal to the Court of Appeal for the First Circuit, State of Louisiana, which Court on December 6th, 1922, reversed the judgment of the said District Court and remanded the cause for further proceedings, the decree reading as follows:

> "The judgment appealed from is reversed, the plea of prescription overruled, and the case remanded to be proceeded with in accordance with law.

That on March 18th, 1924, the said cause so remanded was tried before the said District Court, which on March 18th, 1924, overruled the renewed plea based on the state statute of limitations and entered judgment in favor of Gardiner and against your petitioner in the full amount claimed, said judgment reading as follows:

> "This case was regularly tried, argued and submitted, and for the reason of the law and the evidence being in favor of the plaintiff, and against the defendant;
>
> **"It is ordered, adjudged and decreed** that the plaintiff, **John B. Gardiner,** do have judgment and recover of the **Louisiana Western Railroad Company,** in the full sum of **three hundred twenty-four ($324.00) dollars,** with five per cent interest from July 9, 1920 until paid, and all costs.

> "**It is further decreed** that the plaintiff's plea of prescription against the reconventional demands of the defendant be maintained, and that the said reconventional demands be and the same are hereby rejected, at defendant's cost.

That from such judgment your petitioner took an appeal to the Court of Appeal for the First Circuit, State of Louisiana, where the said cause was entered and docketed, being entitled "John B. Gardiner vs. Louisiana Western Railroad Company" and numbered 867 on said docket.

That on October 22nd, 1924, the case came on to be heard in the said Court of Appeal before the Honorable Julian Mouton, the Honorable Paul Leche and the Honorable Clay Elliott, Judges of the said Court; and on December 30th, 1924, a decree was entered in the said cause, as follows:

> "It is therefore ordered, adjudged and decreed that there be judgment in favor of the plaintiff, John B. Gardiner, and against the defendant, Louisiana Western Railroad Company, for $324.00, with legal interest thereon from July 9th, 1920, until paid, less and subject to $103.00 as credit applied thereto July 9th, 1920, and as thus amended that the judgment appealed from be affirmed. Defendant and appellant to pay the cost of the lower court; the plaintiff and appellee the cost of appeal.

That said court filed in connection with said judgment an opinion to be found in the transcript hereinafter referred to, stating its reasons as herein set forth.

That your petitioner in due course applied for a rehearing, which was on February 18th, 1925, denied. That your petitioner thereupon and in due course applied to the Supreme Court of the State of Louisiana (the Court of last resort in the said State) for writs of review, which application was on March 30th, 1925, denied.

Your petitioner is advised that the judgment of the Court of Appeal for the First Circuit, State of Louisiana, handed down on December 30th, 1924, hereinabove set forth, is final (having become so on March 30th, 1925, when the Supreme Court of the State of Louisiana refused petitioner's application for writs of review) and is erroneous and that this Honorable Court should require the case to be certified to it for its review and determination under the Act of Congress permitting causes made final in the State Courts to be certified for revision.

Your petitioner shows that in stating in said opinions its reasons for declining to apply the said state statute of limitations, the said Court of Appeal relied on paragraph 11 of section 20 of the Interstate Commerce Act, as amended, and on the clause in the bills of lading,

both hereinabove quoted, as supplanting and waiving the said state statute, so that the entire basis of the action of the said Court of Appeal in declining to maintain petitioner's plea based on the state statute of limitations rested on a construction and interpretation of a clause in an interstate bill of lading and a clause of the Interstate Commerce Act, as amended, which your petitioner insists to have been erroneous.

SPECIFICATION OF ERRORS.

Your petitioner urges that the Court of Appeal for the First Circuit, State of Louisiana, erred in the following particulars:

1. In regarding paragraph 11 of section 20 of the Interstate Commerce Act, as amended by the Transportation Act of 1920, reading:

> "It shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period * * * for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice",

as a federal statute of limitation.

2. In regarding as legal and valid the provision in the bills of lading in question that

> "suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property."

3. In not holding, even if the said bill of lading provision were legal and valid (which is denied) that it did not have the effect of supplanting or waiving Act No. 223 of the General Assembly of the State of Louisiana, passed at the Regular Session of 1914, that

> "All actions for loss of or damage to shipments of freight, shall be prescribed by two years, said prescription to run from the date of shipment."

4. In not holding that the Louisiana statute of limitation (Act No. 223 of 1914):

> "All actions for loss of or damage to shipments of freight, shall be prescribed by two years, said prescription to run from the date of shipment",

applied to this case and constituted an absolute bar to plaintiff's claim.

That this case, therefore, involves the application vel non of a state statute of limitations to a suit for loss of and damage to an interstate shipment, which necessitates the interpretation of an important provision of the Interstate Commerce Act and the interpretation of a clause in the bills of lading covering the said interstate shipment; and the final and authoritative decision by this Court of the questions presented is highly desirable from the point of view of the carriers and the shipping public, since there are numerous disputed claims turning on the answer to these questions, involving large sums of money.

Your petitioner shows that there has already been filed in this Honorable Court a petition for a writ of

error in this case, entitled "Louisiana Western Railroad Company vs. John B. Gardiner," being No. 1250, October Term, 1924, and petitioner by reference attaches hereto the copy of the transcript of record of the case, already lodged in this Court in connection with the said writ of error, this being done by stipulation annexed hereto, signed by counsel for Gardiner.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the Court of Appeal for the First Circuit, State of Louisiana, commanding that Court to certify and send to this Court on a day to be designated a full and complete transcript of the record and all proceedings of the said Court of Appeal had in said cause, to the end that this cause may be reviewed and determined by this Honorable Court as provided by law, and that the said judgment of the Court of Appeal for the First Circuit, State of Louisiana, be reversed by this Honorable Court, and for such further relief as may seem proper, and your petitioner will ever pray.

P. S. Pugh,
Geo. Denegre,
Victor Leovy,
Henry H. Chaffe,
Harry McCall,
Jas. Hy. Bruns,
Attorneys for Petitioner.

STATE OF LOUISIANA,
PARISH OF ORLEANS.

Before me, the undersigned authority, personally came and appeared **Harry McCall,** who, being first duly sworn, deposes and says:

That he is one of the attorneys for the petitioner herein; that he is thoroughly familiar with the above proceedings, and that the facts therein stated are true and correct, to the best of his knowledge, information and belief; and that he verily believes them to be true; and that in his opinion the petition is well founded and the case is one in which the prayer of the petition should be granted by this Court.

Harry McCall.

Sworn to and subscribed before me at New Orleans, La., this 4th day of June, 1925.

Edward L. Gladney, Jr.,
Notary Public

(Seal)

In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1924.

No. 1250.

LOUISIANA WESTERN RAILROAD COMPANY,
Petitioner,

versus

JOHN B. GARDINER,
Respondent.

In re: Louisiana Western Railroad Company Applying for Writs of Certiorari to the Court of Appeal for the First Circuit, State of Louisiana.

BRIEF IN SUPPORT OF APPLICATION.

I.
STATEMENT OF CASE.

The question presented by this case is whether or not the State Statute of Louisiana, Act No. 223 of 1914, providing that:

> "All actions for loss of or damage to shipments of freight, shall be prescribed by two

> years, said prescription to run from the date of shipment"

operates as a bar to an action against a common carrier for hire brought in a court of the State of Louisiana for loss of or damage to an interstate shipment made more than two years before the filing of suit, but delivered at destination less than two years before such date, the bills of lading (of which there were two, some of the articles shipped being covered by one and the rest by the other) covering said shipment containing a clause to the effect that:

> "Suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property."

It is the contention of plaintiff, upheld by the State Court, that the state prescriptive statute is inapplicable because:

(1) A federal statute of limitations is provided by Paragraph 11 of Section 20 of the Interstate Commerce Act (Act of February 4, 1887, 24 Stat. at L. 379, as amended by the Transportation Act 1920, Act of February 28, 1920, 41 Stat. at L. 456, 494), reading:

> "It shall be unlawful for any such common carrier to provide by rule, contract, regulation or otherwise a shorter period * * * for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the

carrier has disallowed the claim or any part or parts thereof specified in the notice",

and

(2) The clause in the bills of lading above quoted is a contractual limitation supplanting and waiving the state statute.

As to the first contenion, our answer is that the Federal statute is not in itself a limitation, but is merely a restriction on the freedom of carriers to insert such provisions in their bills of lading. Our answer to the second contention is that the clause in the bills of lading is rendered illegal, null and void by the language of the Interstate Commerce Act already quoted, since the bills of lading require the institution of suit in less than the minimum time authorized by the statute.

We contend further that even if the bill of lading provision were valid and legal it has not the effect of supplanting or waiving the shorter state statute of limitation.

The history of the case is as follows:

On April 12th, 1922, Gardiner filed suit against petitioner in the Eighteenth Judicial District Court for the Parish of Acadia, State of Louisiana, for $324 for loss of or damage to a shipment of household goods and two automobiles made by him on April 3rd, 1920, from Crowley, La., to himself at Murray, Ky., via petitioner as initial carrier, which said shipment in its damaged condition was delivered at destination on April 15th,

1920. Petitioner issued two through bills of lading, one covering the household goods and the other the automobiles.

Petitioner filed an exception based on the state prescriptive statute, above quoted, which on May 10th, 1922, was maintained by the trial court and the suit dismissed.

Gardiner appealed to the Court of Appeal for the First Circuit, State of Louisiana, and on December 6th, 1922, that Court reversed the judgment of the District Court, maintaining the exception, and remanded the case.

Trial of the case in the District Court resulted in a judgment in favor of Gardiner for the full amount claimed, entered on March 18th, 1924. Petitioner thereupon appealed to the State Court of Appeal, which on December 30th, 1924, entered judgment adhering to its original view that the prescriptive plea should be overruled and affirming, but modifying in amount, the judgment of the District Court. Petitioner's application for a rehearing was denied on February 18th, 1925, and its application to the State Supreme Court for writs of review was refused on March 30th, 1925.

Thereafter, and in due course, a writ of error to this Court was sued out and perfected, that proceeding being No. 1250 of the docket of this Court.

The purpose of the present application is to ask a review by this Court of the questions involved, which

are by petitioner regarded as extremely important, both financially (claims involving large sums being dependent on the decision of this case) and as a matter of proper handling of claims by carriers and the filing of suits by shippers.

II.

ARGUMENT.

A.

Paragraph 11 of Section 20 of the Interstate Commerce Act is not a statute of limitations.

The language relied on by our opponent and regarded by the State Court as a statute of limitation is:

> "It shall be unlawful for any such common carrier to provide by rule, contract, regulation or otherwise a shorter period * * * for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice."

It is submitted, in the first place, that the purpose and intent of this provision is so clear as hardly to be susceptible of argument. If, however, argument be necessary, the history of the provision is conclusive.

It was for many years a common practice on the part of carriers to insert in their bills of lading clauses forbidding the institution of suit after various brief periods. Such provisions were sometimes upheld by the courts and were sometimes disregarded on the

ground that they were unreasonable and in contravention of public policy. The question was definitely settled by this Court in **Missouri, Kansas & Texas Ry. Co. vs. Harriman, 227 U. S. 657,** decided in 1913, when the validity of a ninety-day bill of lading limitation was upheld.

Not being satisfied with this result, Congress in 1915 enacted the so-called Cummins Amendment to Paragraph 11 of Section 20 of the Interstate Commerce Act, making it unlawful for carriers to limit, except to the extent named, the time after which suits might not be brought against them. The statute as originally passed authorized contractual limitations forbidding the bringing of suit later than two years and one day from the date of delivery of the property, but the section was amended by the Transporation Act, 1920, so as to read as hereinabove quoted.

In the light of the foregoing, it is clear that the purpose of the Cummins Amendment was not to prescribe a period of limitations, but simply to restrict the freedom of the carriers in inserting contractual limitations in their bills of lading. Had Congress desired to enact a statute of limitations it would have been a very simple matter to do so, but it is obvious that Congress concluded to leave this portion of the field of interstate commerce open to state regulation.

B.

The bill of lading provision relied on is wholly illegal, null and void.

The clause in the bills of lading was:

> "Suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the shipment."

The purpose and effect of the clause was to forbid the institution of suit later than two years and a day after the **delivery of the shipment.**

Reference to the Cummins Amendment as amended by the Transportation Act, 1920, will show that under the law, as it stood at the time this shipment was made, it was unlawful for a carrier

> "to provide by rule, contract, regulation, or otherwise a shorter period * * * for the institution of suits than two years"

from the date of written declination of the claim. Claim cannot be filed and then declined in writing until after the delivery of the property. Therefore, the prescriptive period fixed by the bill of lading provision was shorter than that authorized by the Cummins Amendment, and accordingly by the very language of the Cummins Amendment the bill of lading provision was unlawful.

If unlawful, the provision must be regarded as null and void and of no effect. Any suggestion that the provision should be judicially recast so as to bring it within the pale of legality is not countenanced by any decision which we have been able to find. If such a suggestion were sound, it would necessarily follow that had this suit not been brought until more than two years after the written declination of the claim, the

carrier could then have pleaded as a bar to the suit the bill of lading provision recast so as to conform to the law.

Can it be suggested that under such circumstances any court would validate a provision in itself illegal? Yet if the provision could not be validated for the benefit of the carrier, why should it be validated for the benefit of the shipper?

There have been many decisions holding similar provisions invalid because too short and, therefore, unreasonable. Now had the courts been vested with the healing power of stretching such provisions to the point of reasonableness, it would not have sufficed in such cases to determine merely whether the stipulation pleaded was unreasonable, but the courts would have had to go further and determine what would be reasonable; and if such a reasonable period had elapsed before the institution of suit, then apply the altered limitation and dismiss the suit. Even clearer would this be in such a case as that resulting from the Texas statute forbidding carriers to require the institution of suits in less than two years. A shorter limitation was held null and void in **Southern Kansas Ry. Co. vs. J. W. Berges, 90 S. W. 189 (Texas)**, but neither in that case nor any other, either under the Texas statute or any other, have we found any intimation that the stipulation be rewritten as to conform with the minimum requirement of the law. That such limitations are treated as utterly null and void and therefore as if not written is illustrated by **Adams Express Co. vs. Walker,**

83 S. W. 106, 119 Ky. 121. Numerous other cases to the same effect will be found under the head of "Carriers" in the American Digest, Section 160.

It is significant that in hardly any of these cases is the date when suit was instituted mentioned, from which it follows that it was considered of no importance.

Our conclusion on this branch of the matter is that since the bill of lading provision was contrary to the Federal statute on the subject, the former must be regarded as null and void and treated as if not written.

C.

Even if the bill of lading provision were valid, it has not the effect of supplanting or waiving the state statute of limitations.

In connection with point A, we have already shown that the Cummins Amendment was and is in no sense a statute of prescription, but was intended merely as a restriction on the right of carriers to exercise the privilege of placing in their bills of lading a limitation on the time in which suits might be brought. There is no obligation on carriers to place any limitation in their bills of lading, Congress simply having said to the carriers, "if you do put any contractual limitation in your bills of lading, it cannot be for a shorter term than that named in the law."

The purpose and effect of this amendment cannot be said to be to confer on the shipper any right which he

did not already have. Still less would the insertion by the carrier of the clause in question in the bill of lading confer on the shipper any additional right. The words actually used were:

> "suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the property."

Had a grant in favor of the shipper been intended, the wording would have been along some such lines as the following:

> "suits for loss, damage, or delay may be instituted at any time within two years and one day."

Such a provision as we suggest might be deemed to extend a permission and grant an authority to file suit at any time within the period specified, but that is exactly the type of provision not found in the bill of lading. The language of the bill of lading involved in this case is practically identical with that of Paragraph 11 of Section 20 of the Interstate Commerce Act as it stood before the amendment of February 28th, 1920, by which amendment, as we have already pointed out, that particular language was rendered null and void.

It is to be remembered that the same bill of lading is used in each of the forty-eight states of the Union and that each state has a different statute of limitations applicable to loss and damage suits against carriers. It happens that the Louisiana statute provides for a rather short period. The provision under consideration is not certainly useless even if the suit should be

brought in a state where the prescriptive period is shorter, as statutes of limitations are frequently amended or repealed; and it would, of course, be very important should suit be brought in a state where a longer prescriptive period prevails. Therefore, to stipulate that suit should not be brought after two years from delivery of the property was possibly useful as to some states—and certainly useful as to the rest.

Plaintiff's contention necessarily involves the proposition that the purpose and effect of the bill of lading provision, although couched in the words we have quoted above, is to waive altogether at the inception of the contract the state statute of limitations. Not only is such an intention so rare that we have not been able to find any example thereof, but it is expressly reprobated in the only place we have found it even suggested, that is in Article 2460 of the Louisiana Civil Code: "One cannot renounce a prescription not yet acquired, but it is lawful to renounce a prescription when once acquired." This article of the Code is but an expression of the general policy of the law in regard to statutes of limitation. Prescriptive periods are favored by the law for the reason that they tend to the prompt settlement of differences. They expedite litigation and are calculated to prevent the assertion of stale claims. "Interest reipublicae ut sit finis litium."

In pursuance of this policy, the Courts have generally held that in the absence of statutory provision to the contrary, parties may by their agreements shorten the statutory prescriptive period. This is an ordinary

practice in the case of insurance policies. It is usual to provide in such contracts that the prescriptive period shall be one year from the time the cause of action accrues. On the other hand, the lengthening of the prescriptive period by contract at the very inception of the contract is in violation of this well-settled policy. Hence, if we assume that the carrier intended at the inception of the bill of lading contract to waive the prescriptive period established by the state law, we attribute to the carrier an intent to do something extremely unusual and in violation of the general public policy in regard to statutes of limitation.

It is submitted that such an intention should not be attributed to the parties in the absence of a very clear and definite showing of an unmistakable intent. Such a showing cannot be made. Moreover, the clause in question has an entirely different meaning, purpose and intention. A reasonable and fair interpretation of the bill of lading provision is the following:

> "Suits for loss, damage, or injury, may be instituted within the periods of limitation prescribed by state statute, but shall not be instituted later than two years and one day after the delivery of the property."

This interpretation gives full value to the bill of lading provision and does not either disregard the manifest intention of Congress and of the parties to the contract or nullify the shorter state statutes of limitation. It is, moreover, in keeping with the spirit of the general law as to statutes of limitation and of

our own law, which forbids the renunciation of a prescription not yet acquired.

Our opponents argue that the entire matter of the bill of lading or shipping contract is beyond the power of the states, as that field has been taken charge of by the Federal Government, and that, therefore, the state act on which we rely is not applicable. It is true that there are many decisions of this Court to the effect that the interpretation and construction of various clauses in bills of lading are not subject to particular state rules or regulations, but all such decisions deal with rights given by provisions in the bills of lading and not with matters of remedy. The line of cases on which such reliance is placed is well illustrated by **Adams Express Company vs. Croninger, 226 U. S. 491,** in which the question was as to the validity of a provision in the bill of lading limiting the recovery to the amount expressly stipulated in the bill of lading. The Supreme Court, despite a statute of the State of Kentucky, in whose Courts the case originated, declared the bill of lading stipulation valid as a matter of general law.

As to the distinction between the contractual rights and the time for suit, see also

Koshkonong vs. Burton, 104 U. S., 668.
Terry vs. Anderson, 95 U. S., 628.
12 Corpus Juris 987, Note No. 97.
Atchafalaya Land Co. vs. F. B. Williams Cypress Co., 146 La. 1047, 1064-5, 258 U. S., 190.

The states are not ousted from the entire field of interstate commerce.

> "* * * the mere creation of the Interstate Commerce Commission, and the grant to it of a **measure of control** over interstate commerce, does not of itself, and in the absence of specific action by the commission or by Congress itself, interfere with the authority of the states to establish regulations conducive to the welfare and convenience of their citizens, even though interstate commerce be thereby incidentally affected, so long as it be not directly burdened or interfered with." M., K. & T. R. R. Co. vs. Harris, 234 U. S., 412, 417.

That case upheld the validity of a Texas statute allowing a successful plaintiff an attorney's fee collectible from an interstate carrier in a suit for loss and damage to an interstate shipment.

Subsequent decisions to the same effect are: **Chicago & N. W. R. Co. vs. Nye-Schneider-Fowler Co., 260 U. S., 35; Southern Railway Co. vs. Clift, 260 U. S., 316;** and **Atchison, T. & S. F. R. Co. vs. Vosburg, 238 U. S., 56.**

It is still less true that on this particular question of the time of bringing suits Congress intended to or did prescribe a statute of limitation. As heretofore pointed out by us, there was nothing in the Interstate Commerce Act on this subject until 1915. Up to that time it is therefore clear that statutes of limitation of the various states applied to actions of this kind.

It is to be noted that the Croninger case, and all othes of this class, grow out of the attempt through state rules or regulations to take away or nullify positive rights established by provisions in the bills of lading, and none of them deals with the exercise of the right to sue. In the present case no right to sue is given by the bill of lading clause on which plaintiff relies. The only right given by that clause is to the carrier to plead it as an absolute defense after the lapse of time provided by the said clause. If the clause gave a right to sue, it might be that plaintiff could properly cite the decisions on which he now erroneously rests his case. This distinction is recognized in **New York Central R. R. Co. vs. Lazarus, 278 Fed. 900 (C. C. A. 2)**, in which suit was brought against a carrier for loss of or damage to a shipment moving prior to Federal control. The defendant set up as a defense the very clause in the bill of lading on which plaintiff now relies. This defense plaintiff sought to escape by virtue of the provision in the Transportation Act of 1920 that:

> "The period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers * * * for causes of action arising prior to Federal control."

The situation was such that if the period of Federal control were included in computing the time, the claim was barred under the provision in question, whereas, if the period of Federal control were excluded, the claim was not barred. The Court held that the provision in the Transportation Act did not refer to contractual rights in favor of a carrier, but had reference only to statutory limitations and that, therefore, the

claim was barred and the defense accordingly good. The Court said, at p. 904:

> "Congress had the right to extend the statute of limitations **because the rights to bring the action did not enter into or become a part of the contract.** But where the time within which an action could be brought is agreed upon by the terms of the contract of shipment, it is one of the terms and conditions thereof, and Congress could not deprive the plaintiff in error of this property right, for to do so would be a violation of the provisions of the Fifth Amendment."

It is to be noted that had the Court regarded the bill of lading provision as a Federal statute of limitation, a different result must have been reached. And as the provision is not a Federal statute of limitation and there is, in fact, no Federal statute of limitations as to such claims, Congress evidently intended to leave the matter of statutory regulation to the states, with power to the carriers to shorten the period by contract to the extent allowed.

D.

The state statute of limitations was applicable.

Having now shown that there was neither a Federal statute of limitations nor a valid contractual waiver of the state statute, the only remaining question is as to the applicability of a state prescriptive statute to a cause of action founded on a Federal law. The answer is that if no limitation is created by Congress, the state statute of the forum must be enforced. **17 Ruling Case Law, 694, 695; Campbell vs. Haverhill, 155 U. S., 610;**

613-616; Chattanooga Foundry Co. vs. City of Atlanta, 203 U. S., 390, 397; Boman vs. Southern Menhaden Corporation, 284 Fed., 362.

CONCLUSION.

It is submitted that there was no Federal statute of limitations applicable to this case; that the bill of lading provision relied on was null and void, but even if good did not supplant or waive the state statute of limitations, and that therefore the said state statute should have been applied and plaintiff's suit dismissed.

Accordingly, we urge that the writ herein prayed for should be granted and that this Court should review the decision of the Court of Appeal for the First Circuit, State of Louisiana, and should finally reverse it and reinstate the original judgment of the District Court.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 120

LOUISIANA WESTERN RAILROAD COMPANY

versus

JOHN B. GARDINER.

On Certiorari to Court of Appeal for First Circuit, State of Louisiana, and on Writ of Error to Said Court.

Supplemental Brief on Behalf of Louisiana Western Railroad Company, Petitioner and Plaintiff in Error.

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New Orleans, January 7, 1927.

MONTGOMERY-ANDREE PRINTING CO. INC., 307 CHARTRES, N.O.

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TABLE OF CASES.

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Supplemental Brief on Behalf of Louisiana Western Railroad Company, Petitioner and Plaintiff in Error.

While we believe that the brief herein filed by us in connection with the application for a writ of certiorari adequately presents the issues involved in this case, we are filing this additional brief for the purposes of explaining the theory underlying our proceed-

ing both by writ of error and by certiorari, and of discussing one or two decisions rendered after the preparation of our original brief.

(1)

The applicability of the Louisiana statute of limitations is sought by Gardiner to be avoided in two ways: *First*, by reason of the clause in the bills of lading forbidding the institution of suit later than two years from the date of the delivery of the property, and, *secondly*, on the theory that the language of paragraph 11 of Section 20 of the Interstate Commerce Act constitutes a statute of limitations. As it might be claimed that the two opinions of the Louisiana Court do not clearly show on which of these two contentions they are based, it seemed best to use two methods in seeking a review thereof.

Our position as to the right to the writ of error is that giving validity to the bill of lading provision disregards the provision of the Interstate Commerce Act making it unlawful for any common carrier "to provide by rule, contract, regulation, or otherwise, a shorter period * * * for the institution of suits than two years * * * from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice." This is a denial of the title, right, privilege and immunity set up and claimed by the carrier under the Federal statute; and the controversy, therefore, involves the validity of the Federal statute which was denied by the State Court—hence the writ of error is proper under Sec-

tion 237 of the Judicial Code as it read prior to the Act of February 13, 1925.

(2)

The first of the two questions above mentioned was passed on by the Circuit Court of Appeals for the Eighth Circuit in *Chicago & N. W. Ry. Co. v. Bewsher, 6 Fed. (2nd), 947*, decided on July 28, 1925. In that case the carrier pleaded as a defense the identical bill of lading provision herein relied on by Gardiner, and the plaintiff urged its invalidity because providing a shorter limitation than that allowed by the Interstate Commerce Act. The Court's language, at pages 950 and 955, fits the present case like a glove:

> "(1) Is the provision in section 3 of the bill of lading that 'suits for loss, damage or delay, shall be instituted only within two years and one day after delivery of the property, or, in case of failure to make the delivery, then within two years and one day after a reasonable time for delivery has elapsed,' void as contravening the amendment of February 28, 1920, to paragraph 11 of section 20 of the Act to Regulate Commerce?
>
> (2) May and should the court read out of the provision quoted the words, 'after delivery of the property,' etc., and read into the contract the provision in said amendment that such period for institution of suits be computed from the date when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part thereof specified in the notice?

(3) Is plaintiff estopped to maintain the suit because he redelivered the claim and supporting papers to Albert Swick with direction to commence suit, and the settlement of the claim by Albert Swick?

(4) Is plaintiff concluded by the fact that the grain was loaded by the shipper and that the bill of lading recited that the weight was 'subject to correction'?

I. We consider these questions in the order stated. It is well settled that, prior to the amendment approved February 28, 1920, it was entirely competent for carriers to limit the time within which suits might be brought on contracts of carriage, subject only to the reasonableness of the limitation. Indeed, we are not without authority on the subject as applied to the particular statute as it existed prior to the amendment. Leigh Ellis & Co. v. Payne (D. C.) 274 F. 443, affirmed by the Circuit Court of Appeals for the Fifth Circuit in Leigh Ellis & Co. v. Davis, 276 F. 400, and affirmed by the Supreme Court of the United States in Leigh Ellis & Co. v. Davis, 260 U. S. 682, 43 S. Ct. 243, 67 L. Ed. 460.

Under this statute, as it existed before the amendment, and other provisions relative to the filing of claims, hardship often occurred by reason of the delay of the carrier in giving notice of its disapproval of the claim, often resulting in an unreasonable

balance of time within which the shipper might institute his suit. This was at least one of the evils which Congress sought to remedy by the amendment of February 28, 1920. By that amendment the words, 'such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice,' were added to the previous paragraph, making the paragraph read as follows:

> 'Provided further, that it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days, for the filing of claims than four months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.' Comp. St. Ann. Supp. 1923 § 8604a.

II. It seems to us clear that, after the amendment quoted, any flat restriction of time within which suit might be brought based upon the time of delivery of the shipment, rather than the time of the giving of the notice prescribed, would be in contravention of the amendment, and 'be unlawful'

within the purview of the amended paragraph.

III. But plaintiff in error, probably anticipating the possibility of the conclusion we here reach, contends that, notwithstanding the inconsistency of the language of the provision of the contract with the amended statute, the court should read out of the contract that part of its express language which initiates the time limit at the date of shipment, and read into the contract the provision of the amendment of 1920. In support of this contention counsel cites American Railway Express Co. v. Lindenburg, 260 U. S. 584, 43 S. Ct. 206, 67 L. Ed. 414. We do not think this case in point on the question under consideration. In that case the unlawful provision of the receipt could be readily separated from the remaining provisions, and that case merely holds that the presence of the unlawful provision did not render unlawful others which were separable from it. In the instant case, however, we are asked, not only to read out of the contract a particular expressed provision, but to substitute therefor another entirely different provision, and thereby to declare lawful and enforceable a form of contract which Congress deliberately undertook to and did prohibit. We are constrained to the conclusion that this cannot be done."

The second question above mentioned is fully discussed in our original brief.

We consider it our duty to call to the attention of this Court the decision of the District Court for the Eastern District of Louisiana in *Hartness v. Iberia & Vermilion Railroad Co., 297 Fed., 622.* That case is an authority against us, and we can only say that, in our humble judgment, that Court proceeded on an erroneous theory which is fully answered by the *Bewsher* case. We may add that the *Hartness* case was cited in the briefs in the *Bewsher* case.

For the reasons stated in our original brief, and hereinabove amplified, we pray that the judgment of the Louisiana Court overruling the State statute of limitations be reversed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 120.—October Term, 1926.

Louisiana and Western Railroad Company, Plaintiff in Error, *vs.* John B. Gardiner.	In Error and on Writ of Certiorari to the Court of Appeal of the State of Louisiana, First Circuit.

[February 21, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

After the record came here under writ of error the Railroad Company presented a petition for certiorari. The cause is reviewable by certiorari, and the application therefor is granted. The writ of error will be dismissed.

April 3, 1920, the petitioner received from respondent Gardiner at Crowley, Louisiana, various articles consigned to himself at Murray, Kentucky, and issued to him two bills of lading which contained this clause: "Suits for loss, damage or delay shall be instituted only within two years and one day after delivery of the property." The goods were delivered at Murray in bad condition April 15, 1920. He sued to recover for the damage in a Louisiana State court, April 12, 1922. The Company successfully relied upon the local statute of limitation—"All actions for loss of or damage to shipments of freight shall be prescribed by two years, said prescription to run from the date of shipment" (Act 223 of 1914).

The Court of Appeal declared: "The liability sought to be enforced is the 'liability' of an interstate carrier for loss or damages under an interstate contract of shipment . . . The validity of any stipulation in such a contract which involves the construction of the statute and the validity of the limitation thereby imposed, is a federal question, to be determined under the general law, and as such is withdrawn from the field of state law or legislation. . . . State laws limiting time for bringing suit on interstate shipments are superseded by Carmack Amendment." And it accordingly held

the plea of prescription insufficient, reversed the judgment of the trial court and remanded the cause for further proceedings.

On the second trial judgment went for respondent for the full amount claimed. The Court of Appeal reduced this by the amount of the Company's claim for an undercharge and the war tax. The Supreme Court refused a writ of certiorari.

Petitioner maintains that the federal statutes prescribe no limitation and that the state law controls. We think this is the correct view. The court below wrongly construed the federal statutes.

The Carmack Amendment to the Hepburn Act, June 29, 1906, c. 3591, § 7, 34 Stat. 584, 595, added the following provision to Section 20, Act to Regulate Commerce, Feb. 4, 1887, c. 104, 24 Stat. 370, 386.

> That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

This Court held that bills of lading for interstate shipments issued after the Carmack Amendment must be construed according to rules approved by the federal courts and upheld provisions therein which required claims to be filed within any specified time if reasonable. *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 505; *Missouri, Kansas & Texas Ry.* v. *Harriman*, 227 U. S. 657, 672; *Missouri, Kansas & Texas Ry.* v. *Harris*, 234 U. S. 412, 420; *Atchison & Topeka Ry.* v. *Harold*, 241 U. S. 371, 377, 378; *St. Louis, I. Mt. & So. Ry. Co.* v. *Starbird*, 243 U. S. 592, 604; *Erie R. R. Co.* v. *Shuart*, 250 U. S. 465, 467; *American Ry. Exp. Co.* v. *Levee*, 263 U. S. 19, 21.

The Cummins Amendment, March 4, 1915, c. 176, 38 Stat. 1196, 1197, modified the Carmack Amendment and directed—

> That it shall be unlawful for any such common carrier to provide by rule, contract, regulation or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years.

The Transportation Act, 1920, c. 91, 41 Stat. 456, 494, provides—

> That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days, for the filing of claims than four months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

The bills of lading issued by petitioner undertook to restrict the institution of suits for loss to two years and one day after delivery of the property. This restriction does not accord with the Transportation Act which declared unlawful any limitation shorter than two years from the time notice is given of the disallowance of the claim, and is therefore ineffective. See *Chicago & N. W. Ry.* v. *Brewsher*, 6 Fed. (2d) 947. But neither the above-quoted provision from the Cummins Amendment nor the one from the Transportation Act was intended to operate as a statute of limitation. They restricted the freedom of carriers to fix the period within which suit could be brought—prohibited contracts for any shorter period than the one specified.

Here, although the rights of the parties depended upon instruments the meaning and effect of which must be determined according to rules approved by the federal courts, there was no federal statute of limitations and the local one applied. *Campbell* v. *Haverhill*, 155 U. S. 610, 613, *et seq.*; *Chattanooga Foundry* v. *Atlanta*, 203 U. S. 390, 397; *Meeker & Co.* v. *Lehigh Valley R. R.*, 236 U. S. 412, 423.

The judgment of the Court of Appeal must be reversed, and the cause will be remanded there for further proceedings not inconsistent with this opinion.